

## AGENDA

### COMMITTEE ON BILLS ON SECOND READING

**February 21, 2006**  
**Aldermen Duval, Lopez,**  
**Gatsas, Garrity, Pinard**

**5:15 PM**  
**NH Primary Room**  
**City Hall (3<sup>rd</sup> Floor)**

1. Chairman Duval calls the meeting to order.
2. The Clerk calls the roll.
3. Chairman Duval advises that the first purpose of the meeting is organizational in nature, and requests the Clerk to provide a brief overview regarding typical issues addressed by the Committee.

### **TABLED ITEMS**

**A motion is in order to remove any of the following items from the table for discussion.**

4. Shoreland Protection Act.  
*(Originally tabled 01/24/2005. Retabled 08/23/2005 pending Planning Director's advice.)*
5. Ordinance:  
    "Amending Sections 33.024, 33.025 & 33.026 (Solid Waste Compliance Officer) of the Code of Ordinances of the City of Manchester."  
*(Tabled 11/22/2005)*
6. Ordinance:  
    "Amending the Code of Ordinances of the City of Manchester by adding a new Chapter 54: Storm Water to Title V: Public Works."  
*(Tabled 11/22/2005 pending further review by the Highway Department.)*
7. If there is no further business, a motion is in order to adjourn.



Robert S. MacKenzie, AICP  
Director

# CITY OF MANCHESTER

## Planning and Community Development

Planning  
Community Improvement Program  
Growth Management



Staff to:  
Planning Board  
Heritage Commission  
Millyard Design Review Committee

**IN BOARD OF MAYOR & ALDERMEN**

**DATE:** January 4, 2005

**ON MOTION OF ALD.** DeVries

**SECONDED BY ALD.** Forest

**VOTED TO** refer to the Committee on  
Bills on Second Reading.

*Paul Bernier*  
**CITY CLERK**

December 28, 2004

Honorable Board of Mayor and Aldermen  
City Hall  
One City Hall Plaza  
Manchester, New Hampshire 03101

*re: Shoreland Protection Act*

Honorable Board Members:

As requested by the Board, I would like to take a few minutes to provide a brief presentation on the Shoreland Protection Act at you next meeting.

If you have any questions, please feel free to contact me.

Sincerely,



Robert S. MacKenzie, AICP  
Director of Planning & Community Development

01-24-05 BJR

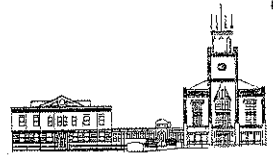
Tabled - pending  
discussion with  
Planning Dir.

04-04-05 Tabled  
pending per  
Planning Director's  
Advice



# CITY OF MANCHESTER

## Office of the City Clerk



Leo R. Bernier  
City Clerk

Carol A. Johnson  
Deputy City Clerk

Paula L-Kang  
Deputy Clerk  
Administrative Services

Matthew Normand  
Deputy Clerk  
Licensing & Facilities

Patricia Piecuch  
Deputy Clerk  
Financial Administration

### MEMORANDUM

To: Robert MacKenzie, Planning Director

From: Carol A. Johnson, Deputy City Clerk

Date: November 22, 2004

Subject: Comprehensive Shoreland Protection Act

Please be advised that at a meeting of the Board of Mayor and Aldermen, held on November 16, 2004, it was voted to have the Planning Department make a presentation to the full Board on the Comprehensive Shoreland Protection Act.

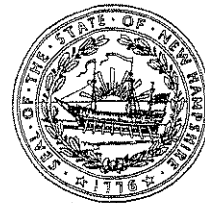
We are asking that you please inform our office once you are ready to make the presentation so that we can put you on the BMA agenda.

Enclosure



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-2147 FAX (603) 271-6588



November 1, 2004

**TO:** Municipal Officials (Town Clerk, Code Enforcement Officer, Board of Selectmen,  
Zoning Board of Adjustment, Conservation Commission, et al)

**RE: Comprehensive Shoreland Protection Act – RSA 483-B**

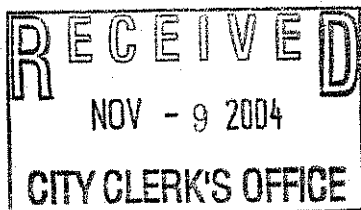
Dear Municipal Official:

The Department of Environmental Services (DES) has received many inquiries as to the proper interpretation and application of the provisions contained within the Comprehensive Shoreland Protection Act, RSA 483-B ("the Act"). Because the Act has been amended several times in the past few years, a copy of the current version of the Act is enclosed for your reference. In addition, DES recently sought advice from the Attorney General's Office on several issues relating to the Act. A copy of the Opinion of the Attorney General dated September 2, 2004 is also enclosed for your reference. Based upon that advice and the Department's experience in interpreting and enforcing the Act, this letter has been prepared to provide clarification on some of the provisions and common misconceptions relative to the Act.

**1. THE ACT APPLIES TO LOCAL PERMITTING DECISIONS**

*All municipal permitting officials should be familiar with the Act.* Under the Act, "local permits for work within the protected shoreland shall be issued **only when consistent** with the policies of this chapter." (RSA 483-B:3, with emphasis added). Thus, the Act applies to *every* permitting decision made by *every* municipality in the state with respect to a project within the protected shoreland. The protected shoreland is defined as those areas within 250 feet of a public waterbody such as coastal waters, a great pond, or major streams and rivers that are not designated under the Rivers Management and Protection Act.

The only shoreland work to which the Act does not apply is work in a municipality that has adopted a shoreland protection ordinance that has been **certified by the Office of Energy and Planning** as being more stringent than the Act. At this writing, Sunapee is the only municipality in New Hampshire whose ordinance has been certified. The Act empowers DES and the Attorney General's Office to take enforcement action for any violation of the Act, including the issuance of a permit that is not consistent with the provisions of the Act. (RSA 483-B:18).



**DATE:** November 16, 2004

**ON MOTION OF ALD.** DeVries

**SECONDED BY ALD.** Roy

**VOTED TO** have the Planning Department make a presentation to the Board.

  
TODD Access: Relay NH 1-800-735-2964

## 2. PRIMARY STRUCTURE SETBACK

The Act requires that "primary structures", typically residences, be set back behind the "primary building line." (RSA 483-B:9, II(b)). Under the original version of the Act, a municipality could establish its own shoreland building setback that would serve as the primary building line in that municipality.

However, in 2002, the Act was amended to establish an absolute distance of 50 feet from the waterbody as the primary building line. (2002 N.H. Laws 114). The amendment removed the provision that allowed municipalities to establish their own setback for primary structures. The amendment allowed municipalities that had established a setback of less than 50 feet prior to January 1, 2002 to maintain that lesser setback. Even in a municipality that adopted a setback of less than 50 feet prior to January 1, 2002, *all other provisions* of the Act continue to apply.

Under the current version of the Act, no municipality may issue a waiver that results in a setback of less than 50 feet. While a municipality that established a primary structure setback of less than 50 feet prior to January 1, 2002, may maintain that lesser setback, it *may not* waive any portion of the setback. By contrast, a municipality that established a primary structure setback greater than the state minimum of 50 feet may waive a portion of its setback, but only to the limit of the state 50-foot setback. For example, a town may waive its 65 foot setback but only to the limit of the 50 foot state setback. Because the Act does not authorize any variance to the primary structure setback, *there is no avenue available to DES for issuance of a variance to the primary structure setback.*

For all new construction subsequent to January 1, 2002 the entire primary structure, *including attached decks*, must be located behind the 50 ft setback. The only exception is construction in municipalities which, by ordinance adopted prior to January 1, 2002, established a setback less than 50 feet; however, in those communities, all construction must strictly comply with the full local setback.

## 3. EXPANSION OF NONCONFORMING STRUCTURES

Section 11 of the Act governs existing nonconforming structures. This provision, which applies to structures built prior to July 1, 1994, was amended in 2002 making the law stricter (2002 N.H. Laws 263:10).

Under the current version of the Act, structures located closer to the water than the primary building line may be "repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but *no expansion of the existing footprint or outside dimensions shall be permitted.*" (RSA 482-B:11, I, emphasis added). DES interprets this to apply only to those portions of the primary structure that lie between the reference line and the setback line and not the portions of the structure located behind the setback line.

4

Thus, any expansion of an existing structure that is located within the primary structure setback requires a waiver from DES. DES can grant a waiver for redevelopment of a site that contains a nonconforming structure (i.e. the demolition and rebuilding of a structure), only when the redevelopment plans demonstrate that the proposed structure is "*more nearly conforming*" to the Act than the existing structure.

A waiver from DES is required when a property owner proposes an expansion of any of the outside dimensions of the existing structure, *including the height*. Addition of a second floor is considered an expansion even if the overall building height will not increase. Addition of a foundation (provided that the elevation of the first floor remains substantially the same) and a change in the pitch of the roof for structural reasons are not considered expansions. Also, for nonconforming structures erected prior to July 1, 1994, no waiver is required for the addition of a deck or open porch extending no more than 12 feet toward the reference line. *Existing decks and open porches may not be converted into part of the living space.*

**MUNICIPALITIES SHOULD REQUIRE PROPERTY OWNERS TO SECURE ANY REQUIRED VARIANCE OR WAIVER FROM DES PRIOR TO THE ISSUANCE OF A BUILDING PERMIT. THIS WILL ASSURE THAT OWNERS DO NOT BEGIN CONSTRUCTION THAT DOES NOT CONFORM TO THE ACT.**

#### 4. CREATING A BUILDING ENVELOPE

Trees, shrubs and groundcover within the proposed building envelope are not included when calculating the basal area limitation or restrictions on the vegetative buffer under RSA 483-B:9, V(a)(2)(A). A building envelope is defined as follows:

- Between the reference line and the primary structure line - an area of 15 feet surrounding access roads, driveways, other impervious surfaces, septic systems and all structures except accessory structures.
- Between the primary structure line and 150 feet from the reference line - an area of 25 feet surrounding access roads, driveways, other impervious surfaces, septic systems, and all structures except accessory structures.
- For accessory structures - an area of 10 feet surrounding the footprint of the accessory structure.

The property owner is required to stake the building footprint(s) in the field prior to construction and prior to removal of vegetation.

## 4

### 5. TREES, SHRUB AND GROUNDCOVER REMOVAL

Outside of the building envelope, only 50% of the trees, shrubs and groundcover located within 150 ft of the reference can be removed, and these must be removed in a manner that leaves an "evenly distributed" stand of remaining vegetation. This includes all trees, saplings, shrubs and groundcover and means *no clear cutting of an open swathe for establishing a view.*

### 6. STUMPING

Woody vegetation that is removed from within 50 feet of the reference line *may not be stumped*, even for accessory structures. Stumping within this area is allowed only for beaches or docking facilities that have received a permit from DES.

### 7. ACCESSORY STRUCTURES

An accessory structure is defined as a structure that is on the same lot and is customarily incidental and subordinate to the primary structure. It includes such things as paths, driveways, patios, and other improved surfaces, pump houses, gazebos, woodsheds, garages, or other outbuildings. Water-dependent structures, such as boathouses, boat ramps and docks, are not considered accessory structures.

Accessory structures shall:

- Be constructed only if allowed by local zoning and if constructed in accordance with the local building code,
- Be no more than 20 feet in height,
- Be no larger than 150 square feet in size,
- Be set back at least 20 feet from the reference line and,
- Be built on land having less than a 25% slope.


### 8. REPLANTING

Replanting to restore the natural woodland buffer that is required as either mitigation or as part of an enforcement action must use native species that are appropriate for the soil type and exposure conditions of the property. Replanting must be done proportional to the density and/or to compensate for the basal area removed as part of the restoration of the property.

4

It is essential that DES and municipalities work closely with one another to develop full understanding and compliance with the Act. I hope that you find this information helpful in the valuable work that you do in the interests of your community and our state's valuable shorelands. If you have any questions or require additional information, I would encourage you to contact any member of my staff at 603-271-2147.

Sincerely;

  
Collis G. Adams CWS, CPESC  
Wetlands Bureau Administrator

cc: Jennifer J. Patterson, Chief, Environmental Protection Bureau, NH AGO

Enclosures

4

ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE

22 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6897



KELLY A. AYOTTE  
ATTORNEY GENERAL

September 2, 2004

Michael P. Nolin, Commissioner  
Department of Environmental Services  
29 Hazen Drive  
Concord, New Hampshire 03301

Dear Commissioner Nolin:

This responds to your request for clarification of several issues involving the interaction between the Shoreland Protection Act and other state and municipal regulatory programs. Specifically, you inquired about the obligations of the Department of Environmental Services ("DES") under the Act when issuing other environmental permits, and the circumstances under which a local shoreland ordinance, rather than the Act, applies to a particular project.

- I. THE SHORELAND PROTECTION ACT REQUIRES THE DEPARTMENT OF ENVIRONMENTAL SERVICES, IN PERMITTING A PROJECT WITHIN THE PROTECTED SHORELAND THAT FALLS UNDER SEPARATE PERMIT JURISDICTION OF THE AGENCY, ALSO TO ASSESS WHETHER THE APPLICANT'S PROPOSAL MEETS THE MINIMUM SHORELAND PROTECTION DEVELOPMENT STANDARDS.

The Comprehensive Shoreland Protection Act, RSA Chapter 483-B ("the Act"), originally enacted in 1991, functions statewide as an additional layer of regulation which overlays existing state and municipal permitting schemes, such as building permits, wetlands permits, and septic system approvals. 1991 N.H. Laws 303:1. Aimed at protecting the state's public waters and preventing "uncoordinated, unplanned and piecemeal development along the state's shorelines," the Act establishes generally applicable minimum standards for development within the protected shoreland. RSA 483-B:1 (Purpose); RSA 483-B:9 (Minimum Standards).<sup>1</sup> In keeping with its "comprehensive" nature, the Act applies to all state and local permitting decisions which might affect the development of waterfront property. RSA 483-B:3, I ("State and local permits for work within the protected shorelands

<sup>1</sup> The Act applies to land within 250 feet of the "reference line" or high water mark. RSA 483-B:4, XV (definition of "protected shoreland"), XVII (definition of "reference line").

shall be issued only when consistent with the policies of this chapter"). DES has authority to enforce the Act, as do municipalities in which protected shoreland is situated. RSA 483-B:5 (DES); RSA 483-B:8, III (municipalities).

The Act does not contain its own separate permit requirement.<sup>2</sup> Rather, its standards are designed to "piggy-back" on existing state and local permit proceedings. RSA 483-B:3, I & II; RSA 483-B:6; RSA 483-B:14 (rehearings and appeals). Section 6 of the Act defines the DES role in issuing permits for work within the protected shoreland:

I. Within the protected shoreland, any person intending to:

- (a) Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.
- (b) Construct a water-dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.
- (c) Install a septic system as described in RSA 483-B:9, V(b)(1)-(3) shall obtain all permits pursuant to RSA 485-A:29.
- (d) Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.
- (e) Subdivide land as described in RSA 483-B:9, V(d) and (e) shall obtain approval pursuant to RSA 485-A:29.

II. In applying for these approvals and permits, such persons shall demonstrate to the satisfaction of the department that the proposal meets or exceeds the development standards of this chapter. The department shall grant, deny, or attach reasonable conditions to a permit listed in subparagraphs I(a)-(e), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

RSA 483-B:6 (Supp. 2003). In programs that predate the Act, DES has regulatory authority over the permits listed in RSA 483-B:6, I(b) - (e). RSA 482-A:3 (wetlands permit); RSA 485-A:17 (terrain alteration); RSA 485-A:29 (septic system and subdivision approval).

The well-established principles of statutory interpretation hold that statutes must be interpreted based on their plain language, focusing on the statute as a whole, not on isolated words or phrases. Transmedia Restaurant Co., Inc. v. Devereaux, 149 N.H. 454, 462 (2003). When the language used in a statute is clear and unambiguous, there is no need to examine the provision's legislative history. Merrill v. Great Bay Disposal Serv., 125 N.H. 540, 542

<sup>2</sup> As originally enacted, the Act required that "[e]ach person intending to construct a new or expanded structure within the protected shoreland, . . . or any other activity which will alter the existing character of the protected shoreland, shall seek a shoreland development permit" from DES. 1991 N.H. Laws 303:1; RSA 483-B:6 (1992 Bound Volume). However, in 1992 the permit requirement was eliminated, and section 6 of the Act was adopted in substantially its present form. 1992 N.H. Laws 235:10.

(1984). "A widely accepted method of statutory construction is to read and examine the text of the statute and draw inferences concerning its meaning from its composition and structure." *Id.*, quoting *State v. Flynn*, 123 N.H. 457, 462 (1983).

Under the plain language of the Act, when an application for a DES permit triggers shoreland review under section 6, DES must proceed with its ordinary permitting process, but must also consider whether the proposal meets the minimum shoreland standards. These standards, contained in RSA 483-B:9, require (among other things) that primary structures be set back behind the primary building line,<sup>3</sup> prohibit certain activities and substances within the protected shoreland,<sup>4</sup> and establish specific requirements with respect to maintenance of a natural woodland buffer,<sup>5</sup> septic systems,<sup>6</sup> and prevention of erosion and siltation.<sup>7</sup> If DES is not satisfied that the proposal meets the minimum standards of the Act, the agency must deny the application. RSA 483-B:6, II.

After careful review, we conclude that the agency's current practice should be modified so as to better comply with the Act. Prior to issuing a permit, DES must be satisfied that the proposal meets the Act's minimum standards. RSA 483-B:6, II. Currently, DES has no formal mechanism for reviewing plans for a proposal's shoreland impacts, taken separately from the standard permit requirements under other regulatory statutes. The shoreland rules require applicants for the permits listed in RSA 483-B:6, I to certify that their projects meet the minimum shoreland standards. N.H. Code of Admin. Rules, PART Env-Ws 1409. Consistent with this rule, the DES practice has been to rely on a combination of the applicant's certification and a permit condition requiring compliance with the Act.

Relying on the applicant's certification and the prospect of enforcement action for noncompliance is not sufficient to demonstrate "satisfaction." Instead, when issuing an environmental permit for a project located within the protected shoreland, DES must make affirmative findings showing the proposal's consistency with the minimum standards of the Act. To provide a basis for these findings, the staff must request that the applicant provide information sufficient to demonstrate that the minimum standards are satisfied. Then, in issuing or denying the permit, the agency must make findings to support its conclusion, and condition the permit on compliance with any plans, specifications or techniques necessary to ensure that the project conforms with the minimum standards.

For example, the DES wetlands program might receive an application under RSA 482-A:3 for a boathouse from a property owner who also intends as part of the same

<sup>3</sup> RSA 483-B:9, II(b).

<sup>4</sup> The Act prohibits salt storage yards, automobile junk yards and solid or hazardous waste facilities, as well as the use of fertilizer within 25 feet of the reference line. RSA 483-B:9, II(a) and (d).

<sup>5</sup> RSA 483-B:9, V(a).

<sup>6</sup> RSA 483-B:9, V(b).

<sup>7</sup> RSA 483-B:9, V(c). In addition, the Act contains other minimum standards concerning lot size, public utilities, and existing waste facilities. RSA 483-B:9, V(d-f).

4  
Michael P. Nolin, Commissioner  
Department of Environmental Services  
September 2, 2004  
Page 4 of 6

"project" to construct or modify other structures within the protected shoreland.<sup>8</sup> Under these circumstances, DES should review not only the boathouse plans, but also the plans for the other aspects of the project. To ensure that DES receives the necessary information from the applicant, I recommend that the standard application forms be modified to include a question about whether additional work in the protected shoreland is planned as part of the same project. For applicants who answer in the affirmative, there should be an additional form in which they must provide details about those aspects of the project. The application should not be considered complete until the applicant has provided this information.<sup>9</sup> Some projects may require multiple DES permits (for example, both wetlands and site specific). For such projects, there should be internal coordination within the agency to ensure that the shoreland review is only performed once, and is incorporated into each permit issued.

You also asked about the appropriate appeal route for DES permitting decisions under section 6 of the Act. The Act specifically addresses this issue:

*Where the requirements of this chapter amend the existing statutory authority of the department or other agencies relative to certain established regulatory programs and shall be enforced under these established regulatory programs, the existing procedures governing contested cases and hearings and appeals regarding these requirements shall apply. Where requirements of this chapter are new and do not amend existing statutory authority relative to any established regulatory programs, the procedures set forth in RSA 541-A:31 for contested cases shall apply.*

RSA 483-B:14 (emphasis added). Thus, any administrative appeal of a permitting decision is governed by the procedure specified in the statute under which the underlying permit was granted. See generally RSA 21-O:14, governing administrative appeals from DES decisions. For wetlands permits, appeal should be to the Wetlands Council (see RSA 482-A:10 and RSA 21-O:5-a); for subsurface and site specific permits, appeal should be to the Water Council (see RSA 21-O:7). Where the agency is undertaking enforcement action under the Act itself, appeal would be to the Water Council for administrative orders, and to the New Hampshire Supreme Court under RSA ch. 541 for administrative fines. RSA 21-O:7, IV; RSA 483-B:5, V (administrative orders); RSA 483-B:18, III(c)(administrative fines).

<sup>8</sup>The Act says "proposal," not "project." RSA 483-B:6, II. However, given the subject matter and broad applicability of the Act, we conclude that the word "proposal" as used in RSA 483-B:6, II should be read broadly to include all work contemplated by the applicant as an integrated project on the property within the protected shoreland at the time the application for the DES permit is submitted. A narrower reading would confine the DES review to the criteria in effect prior to the Act, and undermine the Act's purpose.

<sup>9</sup>This is important for programs with statutory deadlines for acting on complete applications. See, e.g., RSA 482-A:3, XIV (Supp. 2003)(DES must complete review of wetlands application within set number of days of notice of administrative completeness, or application will be deemed granted).

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II. A MUNICIPAL ORDINANCE CAN APPLY INSTEAD OF THE SHORELAND PROTECTION ACT ONLY AFTER THE OFFICE OF ENERGY AND PLANNING HAS CERTIFIED TO THE DEPARTMENT OF ENVIRONMENTAL SERVICES THAT THE LOCAL ORDINANCE IS AT LEAST AS STRINGENT AS THE ACT.

Your second question concerns the circumstances under which a municipal shoreland ordinance applies instead of the standards in the Act. We conclude that a municipal ordinance can render the Act wholly inapplicable, but only when that ordinance has been certified by the Office of Energy and Planning ("OEP") as being equally stringent to the Act. However, with respect to primary building setbacks only, a setback less than fifty feet may apply in a municipality that adopted the setback prior to January 1, 2002.

Shoreland property is exempt from the Act if it is located in a municipality whose local shoreland ordinance has been certified by OEP. Specifically, the Act provides as follows:

I. Subject to paragraph II, the provisions of this chapter shall not apply to any applicant whose land is in a municipality that has adopted a shoreland protection ordinance under RSA 674:16, the provisions of which are at least as stringent as similar provisions in this chapter. The director of the office of energy and planning shall certify to the commissioner that the provisions of a local ordinance are at least as stringent as similar provisions in this chapter.

II. If a municipality has a local ordinance that does not contain a counterpart to all of the provisions of this chapter, the more stringent provisions shall apply.

RSA 483-B:19 (Supp. 2003 and 2004 N.H. Laws 257:44). While paragraph II was added in 2002,<sup>10</sup> the requirement of OEP certification has remained unchanged since the Act took effect in 1994.<sup>11</sup>

In order for a municipality to qualify for the exemption, the plain language of section 19 requires not only that the local ordinance be as strict as the Act, but also that OEP so certify to DES. If the exemption could take effect without OEP certification, the language requiring certification would be impermissibly superfluous. Merrill v. Great Bay Disposal

<sup>10</sup> 2002 N.H. Laws 263:12.

<sup>11</sup> The original 1991 version of the law provided that the Act would not apply in any municipality that had adopted a draft model ordinance provided by the office of state planning, the predecessor to OEP. See 1991 N.H. Laws 303:1; RSA 483-B:19 (1992 Bound Volume). However, the certification requirement, in substantially its current form, was substituted prior to the law taking effect in 1994. RSA 483-B:19 (2001 Bound Volume); 1994 N.H. Laws 383:20. The provision has also been amended several times, most recently in 2004, to reflect changes in the name of the agency performing the certification. 2003 N.H. Laws 319:9; 2004 N.H. Laws 257:44.

4  
Michael P. Nolin, Commissioner  
Department of Environmental Services  
September 2, 2004  
Page 6 of 6

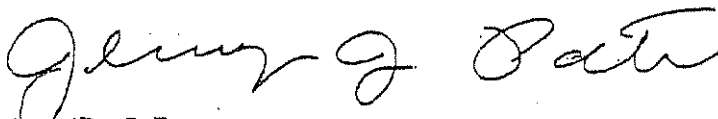
Serv., 125 N.H. 540, 543 (1984)(all words of statute must be given effect; legislature not presumed to use superfluous words). Requiring an affirmative certification by OEP is also consistent with the clear legislative intent that the Act be comprehensive in its application, and that its standards apply to all state and local permits. See RSA 483-B:3 (requiring all state and local permits to be consistent with the Act).

The primary building setback is the only provision of the Act which may vary among municipalities, without OEP certification. Prior to a 2002 amendment, a municipality could establish its own primary building setback, whether lesser or greater than the figure of fifty feet established under the Act. RSA 483-B:9, II (2001 Bound Volume). Under an amendment to the Act which took effect on July 2, 2002, the primary building line is established absolutely at "50 feet from the reference line." 2002 N.H. Laws 114:1; RSA 483-B:9, II (Supp. 2003). Nevertheless, the general court expressly allowed municipalities which had, prior to January 1, 2002, established a setback of less than fifty feet, to maintain that different setback. 2002 N.H. Laws 114:1. Thus, while an uncertified ordinance cannot supplant the Act, certain municipalities whose ordinances have not been certified by OEP may nevertheless have a primary building setback which varies from that established under the Act. Even in those municipalities with different setbacks, however, all other provisions of the Act apply.

In sum, the standards of the Act apply to all state and local permitting decisions, unless the local ordinance has been properly certified by OEP. Both the state and municipalities have authority to enforce the Act; it is worth noting that violations include not only construction that fails to conform with the minimum standards, but also issuance of a permit that is not consistent with the policies of the Act. RSA 483-B:3, I.

I trust this responds to your inquiry. Given the previous uncertainty on the interpretation of these provisions, both within the agency and in the community at large, I recommend that DES undertake outreach consistent with this opinion to ensure affected entities are aware of the Act's requirements.

Very truly yours,



Jennifer J. Patterson  
Senior Assistant Attorney General  
Environmental Protection Bureau  
(603) 271-3679

JJP:mtm

OPN-04-0002

cc: MaryAnn Manoogian, Director, OEP

# The Comprehensive Shoreland Protection Act

Statute

RSA 483-B

Pages 1-16

Rules

Env-Ws 1400

Pages 17-26

Index

Pages 27-30

2002



4

# The Comprehensive Shoreland Protection Act

## RSA 483-B

July 2002

### Table of Contents

483-B:1 Purpose. – The general court finds that:	2
483-B:2 Minimum Standards Required:	2
483-B:3 Consistency Required:	3
483-B:4 Definitions. – In this chapter:	3
483-B:5 Enforcement by Commissioner; Duties; Woodland Buffer:	6
483-B:6 Prior Approval; Permits:	7
483-B:7 Reporting; On-Site Inspections; Local Participation:	7
483-B:8 Municipal Authority:	7
483-B:9 Minimum Shoreland Protection Standards:	8
I. The Standards in This Section	8
II. Restrictions	8
(a) Salt Storage Yards, Automobile Junk Yards, And Solid or Hazardous Waste Facilities	8
(b) Primary Structures	8
(c) Water Dependent Structures	8
(d) Fertilizer	8
III. Public Water Supply Facilities	8
IV. Public Water And Sewage Treatment Facilities	8
IV-a. Hydro Electric Facilities	8
IV-b. Public Utility Lines	9
IV-c. Existing Solid Waste Facilities	9
IV-d. Placement of Solid Waste	9
V. Minimum Standards	9
(a) Natural Woodland Buffer	9
(b) Septic Systems	9
(c) Erosion and Siltation	10
(d) Minimum Lots and Residential Development In the Protected Shoreland	10
(e) Minimum Lots And non-residential Development In The Protected Shoreland	11
(f) Common Owners	12
(g) Variances	12
483-B:10 Nonconforming Lots of Record:	12
483-B:11 Nonconforming Structures:	12
483-B:13 Public Hearing and Notice to Abutter:	13
483-B:14 Rehearings and Appeals:	13
483-B:15 Gifts, Grants and Donations:	14
483-B:16 Assistance to Municipalities; Office of State Planning:	14
483-B:17 Rulemaking:	14
483-B:18 Penalties:	15
483-B:19 Applicability:	15
483-B:20 Designated Rivers:	16

4

The Comprehensive Shoreland Protection Act  
RSA 483-B

**483-B:1 Purpose. – The general court finds that:**

- I. The shorelands of the state are among its most valuable and fragile natural resources and their protection is essential to maintain the integrity of public waters.
- I-a. A natural woodland buffer, consisting of trees and other vegetation located in areas adjoining public waters, functions to intercept surface runoff, wastewater, subsurface flow, and deeper groundwater flows from upland sources and to remove or minimize the effects of nutrients, sediment, organic matter, pesticides, and other pollutants and to moderate the temperature of near-shore waters.
- II. The public waters of New Hampshire are valuable resources held in trust by the state. The state has an interest in protecting those waters and has the jurisdiction to control the use of the public waters and the adjacent shoreland for the greatest public benefit.
- III. There is great concern throughout the state relating to the utilization, protection, restoration and preservation of shorelands because of their effect on state waters.
- IV. Under current law the potential exists for uncoordinated, unplanned and piecemeal development along the state's shorelines, which could result in significant negative impacts on the public waters of New Hampshire.

Source. 1991, 303:1.

**483-B:2 Minimum Standards Required:**

To fulfill the state's role as trustee of its waters and to promote public health, safety, and the general welfare, the general court declares that the public interest requires the establishment of standards for the subdivision, use, and development of the shorelands of the state's public waters. The development standards provided in this chapter shall be the minimum standards necessary to protect the public waters of the state of New Hampshire. These standards shall serve to:

- I. Further the maintenance of safe and healthful conditions.
- II. Provide for the wise utilization of water and related land resources.
- III. Prevent and control water pollution.
- IV. Protect fish spawning grounds, aquatic life, and bird and other wildlife habitats.
- V. Protect buildings and lands from flooding and accelerated erosion.
- VI. Protect archaeological and historical resources.
- VII. Protect commercial fishing and maritime industries.
- VIII. Protect freshwater and coastal wetlands.
- IX. Control building sites, placement of structures, and land uses.
- X. Conserve shoreline cover and points of access to inland and coastal waters.

4

The Comprehensive Shoreland Protection Act  
RSA 483-B

- XI. Preserve the state's lakes, rivers, estuaries and coastal waters in their natural state.
- XII. Promote wildlife habitat, scenic beauty, and scientific study.
- XIII. Protect public use of waters, including recreation.
- XIV. Conserve natural beauty and open spaces.
- XV. Anticipate and respond to the impacts of development in shoreland areas.
- XVI. Provide for economic development in proximity to waters.

Source. 1991, 303:1. 1992, 235:1, 2. 1994, 383:1, eff. July 1, 1994.

**483-B:3 Consistency Required:**

- I. All state agencies shall perform their responsibilities in a manner consistent with the intent of this chapter. State and local permits for work within the protected shorelands shall be issued only when consistent with the policies of this chapter.
- II. When the standards and practices established in this chapter conflict with other local or state laws and rules, the more stringent standard shall control.
- III. All agricultural activities and operations in the state as defined in RSA 21:34-a and as governed by RSA 430, including the use of animal manure, lime, wood ash, irrigation, and the clearing of land for agricultural utilization, and other agricultural technologies, shall be exempt from the provisions of this chapter, provided such activities and operations are in conformance with the most recent best management practices determined by the United States Department of Agriculture Natural Resources Conservation Service, the United States Department of Agriculture Cooperative Extension Service and the department of agriculture, markets, and food. Persons carrying out such agricultural activities and operations in the protected shoreland shall work directly with the local representatives of the above agencies for their particular property.

Source. 1991, 303:1. 1992, 235:21. 1995, 130:8, eff. July 23, 1995; 206:2, eff. Aug. 11, 1995.

**483-B:4 Definitions. – In this chapter:**

- I. "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration.
- II. "Accessory structure" means a structure, as defined in paragraph XXII of this section, on the same lot and customarily incidental and subordinate to the primary structure, as defined in paragraph XIV of this section; or a use, including but not limited to path, driveways, patios, any other improved surface, pump houses, gazebos, woodsheds, garages, or other outbuildings.
- III. "Basal area" means the cross sectional area of a tree measured at a height of 4-1/2 feet above

4

The Comprehensive Shoreland Protection Act  
RSA 483-B

the ground, usually expressed in square feet per acre for a stand of trees.

IV. "Commissioner" means the commissioner of the department of environmental services or designee.

V. "Department" means the department of environmental services.

VI. "Disturbed area" means an area in which natural vegetation is removed, exposing the underlying soil.

VII. "Ground cover" means any herbaceous plant which normally grows to a mature height of 4 feet or less.

VIII. "Lot of record" means a legally created parcel, the plat or description of which has been recorded at the registry of deeds for the county in which it is located.

IX. [Repealed.]

X. "Municipality" means a city, town, village district if specifically authorized to zone by the legislature, or county in respect to unincorporated towns or unorganized places or any combination thereof pursuant to RSA 53-A.

XI. "Natural woodland buffer" means a forested area consisting of various species of trees, saplings, shrubs, and ground covers in any combination and at any stage of growth.

XI-a. "Ordinary high water mark" means the line on the shore, running parallel to the main stem of the river, established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the immediate bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. Where the ordinary high water mark is not easily discernable, the ordinary high water mark may be determined by the department of environmental services.

XII. "Person" means a corporation, company, association, society, firm, partnership or joint stock company, as well as an individual, a state, and any political subdivision of a state or any agency or instrumentality thereof.

XIII. "Primary building line" means a setback from the reference line.

XIV. "Primary structure" means a structure as defined in paragraph XXII of this section that is central to the fundamental use of the property and is not accessory to the use of another structure on the same premises.

XV. "Protected shoreland" means, for natural, fresh water bodies without artificial impoundments, for artificially impounded fresh water bodies, and for coastal waters and rivers, all land located within 250 feet of the reference line of public waters.

XVI. "Public waters" shall include:

(a) All fresh water bodies listed in the official list of public waters published by the department

4

The Comprehensive Shoreland Protection Act  
RSA 483-B

pursuant to RSA 271:20, II, whether they are great ponds or artificial impoundments.

(b) Coastal waters, being all waters subject to the ebb and flow of the tide, including the Great Bay Estuary and the associated tidal rivers.

(c) Rivers, meaning all year-round flowing waters of fourth order or higher, as shown on the now current version of the U.S. Geological Survey 7 1/2' topographic maps. Stream order shall be determined using the Strahler method, whereby the highest year-round streams in a watershed are first order streams, their juncture yields second order streams, the juncture of second order streams yields third order streams, et seq. A listing of the streams of fourth order and higher shall be prepared and maintained by the office of state planning and delivered to the commissioner 30 days after the effective date of this act.

XVII. "Reference line" means:

(a) For natural fresh water bodies without artificial impoundments, the natural mean high water level as determined by the Department of Environmental Services.

(b) For artificially impounded fresh water bodies with established flowage rights, the limit of the flowage rights, and for water bodies without established flowage rights, the waterline at full pond as determined by the elevation of the spillway crest.

(c) For coastal waters, the highest observable tide line, which means a line defining the furthest landward limit of tidal flow, not including storm events, which can be recognized by indicators such as the presence of a strand line of flotsam and debris, the landward margin of salt tolerant vegetation, or a physical barrier that blocks further flow of the tide.

(d) For rivers, the ordinary high water mark.

XVIII. "Removal or removed" means cut, sawed, pruned, girdled, felled, pushed over, buried, burned, killed, or otherwise destructively altered.

XVIII-a. "Repeat violation" means a violation that occurs within 3 years of notification by the department of a prior violation, as defined in RSA 483-B:18, I, whether on the same site or by the same person or entity on a second site. Each day of continuing violation after notification of that violation shall be considered a repeat violation.

XVIII-b. "Repair" means work conducted to restore an existing, legal structure by partial replacement of worn, broken, or unsound parts or to fix a specific defect, during which all of the exterior dimensions are intact and remain so during construction.

XVIII-c. "Replace in kind" means that substitution of a new structure for an existing legal structure, whether in total or in part, with no change in size, dimensions, footprint, interior square footage, and location, with the exception of changes resulting in an increase in the setback to public waters.

XVIII-d. "Replacement system" means a septic system that is not considered new construction under RSA 485-A:29-44 and rules adopted to implement it.

4

The Comprehensive Shoreland Protection Act  
RSA 483-B

XIX. "Residential unit" means a structure, or portion thereof, providing complete and independent living facilities, including permanent facilities for living, sleeping, eating, cooking, and sanitation which are used in common by one or more persons.

XX. "Sapling" means any woody plant which normally grows to a mature height greater than 20 feet and has a diameter less than 6 inches at a point 4-1/2 feet above the ground.

XX-a. "Shoreland frontage" means the average of the distances of the actual natural shoreline footage and a straight line between property lines.

XXI. "Shrub" means any multi-stemmed woody plant which normally grows to a mature height of less than 20 feet.

XXII. "Structure" means anything built for the support, shelter or enclosure of persons, animals, goods, or property of any kind, as well as anything constructed or erected with a fixed location on or in the ground, exclusive of fences.

XXIII. "Subdivision" means subdivision as defined in RSA 672:14.

XXIV. "Tree" means any woody plant which normally grows to a mature height greater than 20 feet and which has a diameter of 6 inches or more at a point 4-1/2 feet above the ground.

XXV. "Urbanization" means the concentrated development found in the sections of towns or cities where there has been an historic pattern of intensive building for commercial or industrial use, or mixed residential, commercial, and industrial use.

XXVI. "Water dependent structure" means a structure that services and supports activities that require direct access to, or contact with the water, or both, as an operational necessity and that requires a permit under RSA 482-A, including but not limited to a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp.

Source. 1991, 303:1. 1992, 235:3-7, 22. 1994, 383:2-5, 22, I, eff. July 1, 1994. 1996, 17:1, 2, eff. June 14, 1996; 228:65, eff. July 1, 1996.

**483-B:5 Enforcement by Commissioner; Duties; Woodland Buffer:**

I. The commissioner, with the advice and assistance of the office of state planning, department of resources and economic development and department of agriculture, markets, and food, shall enforce the provisions of this chapter.

II. The commissioner or his designee may, for cause, enter upon any land or parcel at any reasonable time to perform oversight and enforcement duties provided for in this chapter.

III. [Repealed.]

IV. To encourage coordination of state and local enforcement measures, the commissioner shall notify, at the time of issuance or filing, the local governing body of enforcement action undertaken by the state in respect to protected shoreland within the municipality by sending it copies of relevant administrative orders issued and pleadings filed.

4

The Comprehensive Shoreland Protection Act  
RSA 483-B

V. The commissioner may issue an order to any person in violation of this chapter, of rules adopted under this chapter, or of any condition of a permit issued under this chapter.

Source. 1991, 303:1. 1992, 235:8, 9. 1994, 383:6, 22, II. 1995, 130:4, eff. July 23, 1995.

**483-B:6 Prior Approval; Permits:**

I. Within the protected shoreland, any person intending to:

- (a) Engage in any earth excavation activity shall obtain all necessary local approvals in compliance with RSA 155-E.
- (b) Construct a water dependent structure, alter the bank, or construct or replenish a beach shall obtain approval and all necessary permits pursuant to RSA 482-A.
- (c) Install a septic system as described in RSA 483-B:9, V(b)(1)-(3) shall obtain all permits pursuant to RSA 485-A:29.
- (d) Conduct an activity resulting in a contiguous disturbed area exceeding 50,000 square feet shall obtain a permit pursuant to RSA 485-A:17.
- (e) Subdivide land as described in RSA 483-B:9, V(d) and (e) shall obtain approval pursuant to RSA 485-A:29.

II. In applying for these approvals and permits, such persons shall demonstrate to the satisfaction of the department that the proposal meets or exceeds the development standards of this chapter. The department shall grant, deny, or attach reasonable conditions to a permit listed in subparagraphs I(a)-(e), to protect the public waters or the public health, safety or welfare. Such conditions shall be related to the purposes of this chapter.

Source. 1991, 303:1. 1992, 235:10, eff. Jan. 1, 1993. 1996, 17:3, eff. June 14, 1996.

**483-B:7 Reporting; On-Site Inspections; Local Participation:**

The department may devise a system whereby municipal officials may voluntarily assist with the permitting process under RSA 483-B:6 and the subsequent enforcement of permit conditions, by performing certain reporting functions relative to on-site inspections. Utilization of such reports shall be at the department's discretion, but may, when appropriate, obviate the need for further on-site review by department staff.

Source. 1991, 303:1. 1992, 235:23, eff. Jan. 1, 1993.

**483-B:8 Municipal Authority:**

I. Municipalities may adopt land use control ordinances relative to all protected shorelands which are more stringent than the minimum standards contained in this chapter.

II. Municipalities are encouraged to adopt land use control ordinances for the shorelands of water bodies and water courses other than public waters.

4

The Comprehensive Shoreland Protection Act  
RSA 483-B

III. Municipalities in which protected shoreland is situated may enforce the provisions of this chapter by issuing cease and desist orders and by seeking injunctive relief or civil penalties as provided in RSA 483-B:18, III(a) and (b). Civil penalties and fines collected by the court shall be remitted within 14 days to the treasurer of the municipality prosecuting said violations, for the use of the municipality. Any municipality electing to enforce the provisions of this chapter shall send copies of any pleading to the attorney general at the time of filing. Municipalities bordering the same water body are encouraged to employ jointly a single code enforcement officer to monitor compliance.

IV. The authority granted to municipalities under this chapter shall not be interpreted to extend to RSA 430:28-48.

V. Municipalities bordering the same water body are encouraged to employ jointly a single code enforcement officer to monitor compliance.

Source. 1991, 303:1. 1992, 235:11, eff. Jan. 1, 1993.

**483-B:9 Minimum Shoreland Protection Standards:**

I. The standards in this section are designed to minimize shoreland disturbance so as to protect the public waters, while still accommodating reasonable levels of development in the protected shoreland. Development outside the protected shoreland shall conform to local zoning and local ordinances and shall not be subject to standards established in this chapter.

II. Within the protected shoreland the following restrictions shall apply:

(a) The establishment or expansion of salt storage yards, automobile junk yards, and solid or hazardous waste facilities shall be prohibited.

(b) Primary structures shall be set back behind the primary building line which is 50 feet from the reference line.

(c) A water dependent structure, meaning one which is a dock, wharf, pier, breakwater, or other similar structure, or any part thereof, built over, on, or in the waters of the state, shall be constructed only as approved by the department, pursuant to RSA 482-A.

(d) No fertilizer, except limestone, shall be used within 25 feet of the reference line of any property. Twenty-five feet beyond the reference line, low phosphate, slow release nitrogen fertilizer or limestone, may be used on lawns or areas with grass.

III. Public water supply facilities, including water supply intakes, pipes, water treatment facilities, pump stations, and disinfection stations shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law. Private water supply facilities shall not require a permit.

IV. The placement and expansion of public water and sewage treatment facilities shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law.

4

The Comprehensive Shoreland Protection Act  
RSA 483-B

IV-a. Hydro electric facilities, including, but not limited to, dams, dikes, penstocks, and powerhouses, shall be recognized as water dependent, and shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law.

IV-b. Public utility lines and associated structures and facilities shall be permitted by the commissioner as necessary, consistent with the purposes of this chapter and other state law.

IV-c. An existing solid waste facility which is located within 250 feet of the reference line of public waters under this chapter may continue to operate under an existing permit, provided it does not cause degradation to an area in excess of that area under permit.

IV-d. No solid waste facility shall place solid waste within 250 feet of the reference line of public waters under this chapter except as expressly permitted under RSA 483-B:9, IV-c. However, any solid waste facility may be allowed, subject to permitting conditions under RSA 149-M:9, to erect accessory structures and conduct other activities consistent with the operation of the facility within 250 feet of the reference line of public waters under this chapter, such as filling, grading and installing monitoring wells and other drainage structures as is consistent with its solid waste permit as issued by the department of environmental services. Under no circumstances shall the toe of any slope encroach within 150 feet of the reference line.

V. The following minimum standards shall apply to the protected shoreland provided that forest management not associated with shoreland development nor land conversion and conducted in compliance with RSA 227-J:9, forestry involving water supply reservoir watershed management, or agriculture conducted in accordance with best management practices, shall be exempted from the provisions of this chapter:

(a) Natural woodland buffer.

(1) Where existing, a natural woodland buffer shall be maintained within 150 feet of the reference line. The purpose of this buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrients and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

(2) Within the natural woodland buffer of the protected shoreland under conditions defined in RSA 483-B:9, V, all of the following prohibitions and limitations shall apply:

(A) Not more than a maximum of 50 percent of the basal area of trees, and a maximum of 50 percent of the total number of saplings shall be removed for any purpose in a 20-year period. A healthy, well-distributed stand of trees, saplings, shrubs and ground covers and their living, undamaged root systems shall be left in place.

(B) Any person applying to the department for a septic system construction approval or alteration of terrain permit pursuant to RSA 485-A, or an excavating and dredging permit pursuant to RSA 482-A, within the protected shoreland shall include photographic documentation of the natural woodland buffer.

4

The Comprehensive Shoreland Protection Act  
RSA 483-B

(C) Structures, as defined in RSA 483-B:4, XXII, within the natural woodland buffer shall be afforded an opening for building construction, that shall be excluded when computing the percentage limitations under subparagraph (a)(2)(A).

(D) Dead, diseased, unsafe, or fallen trees, saplings, shrubs, or ground covers may be removed. Their removal shall not be used in computing the percentage limitations under subparagraph (a)(2)(A).

(E) Stumps and their root systems which are located within 50 feet of the reference line shall be left intact in the ground, unless removal is specifically approved by the department, pursuant to RSA 482-A.

(F) Preservation of dead and living trees that provide dens and nesting places for wildlife is encouraged.

(G) Planting efforts that are beneficial to wildlife are encouraged.

(b) Septic Systems.

(1) All new lots, including those in excess of 5 acres, created within the protected shoreland are subject to subdivision approval by the department of environmental services under RSA 485-A:29.

(2) The following conditions, based on the characteristics of the receiving soil as they relate to U.S. Department of Agriculture, Natural Resources Conservation Service drainage classes, shall dictate the setback requirements for all new leaching portions of new septic systems, as follows:

(A) Adjacent to ponds, lakes, estuaries and the open oceans.

(i) Where the receiving soil downgradient of the leaching portions of a septic system is a porous sand and gravel material with a percolation rate equal to or faster than 2 minutes per inch, the setback shall be at least 125 feet from the reference line;

(ii) For soils with restrictive layers within 18 inches of the natural soil surface, the setback shall be at least 100 feet from the reference line; and

(iii) For all other soil conditions, the setback shall be at least 75 feet from the reference line.

(B) Adjacent to rivers the setback shall be no less than 75 feet.

(3) The placement of all septic tanks and leaching portions of septic systems for replacement systems shall comply with the requirements of subparagraph (b)(2), to the maximum extent feasible.

(c) Erosion and siltation

(1) All new structures, modification to existing structures, and excavation or earth moving within protected shoreland shall be designed and constructed in accordance with rules

4

The Comprehensive Shoreland Protection Act  
RSA 483-B

adopted by the department under 541-A, relative to terrain alteration under RSA 485-A:17, to manage stormwater and control erosion and sediment, during and after construction.

(2) New structures and all modifications to existing structures within the protected shoreland shall be designed and constructed to prevent the release of surface runoff across exposed mineral soils.

(3) A permit pursuant to RSA 485-A:17, I shall be required for improved, developed, or subdivided land whenever there is a contiguous disturbed area exceeding 50,000 square feet that is either partially or wholly within protected shoreland.

(d) Minimum lots and residential development in the protected shoreland:

(1) The minimum size for new lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as established by the department of environmental services under RSA485-A and rules adopted to implement it.

(2) For projects in areas dependent upon on-site sewage and septic systems, the total number of residential units in the protected shoreland, whether built on individual lots or grouped as cluster or condominium development, shall not exceed:

(A) One unit per 150 feet of shoreland frontage; or

(B) For any lot that does not have direct frontage, one unit per 150 feet of lot width as measured parallel to the shoreland frontage that lies between the lot and the reference line.

(3) No lot dependent upon an on-site septic system, having frontage on public waters, shall be created with less than 150 feet of shoreland frontage.

(4) Lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards, and shall not be subject to any shoreland frontage requirement, except as provided by municipal standards.

(5) Lots and residential units outside of the protected shoreland shall not be subject to this chapter.

(e) Minimum lots and non-residential development In the protected shoreland:

(1) The minimum size for new non-residential lots in areas dependent upon on-site septic systems shall be determined by soil type lot size determinations, as set forth under rules adopted pursuant to RSA 541-A.

(2) Non-residential development requiring on-site water, sewage and septic systems shall not be constructed on lots less than 150 feet in width.

(3) Non-residential lots in areas serviced by municipal sewers shall conform to municipal minimum lot standards.

4

The Comprehensive Shoreland Protection Act  
RSA 483-B

(4) Non-residential lots outside of the protected shoreland shall not be subject to this chapter.

(f) Common owners and residential or non-residential development. In the protected shoreland, waterfront parcels held in common by one or more owners of contiguous interior parcels may be developed but only in a manner consistent with the provisions of this chapter. Care shall be taken for the adequate provision of parking, toilet facilities, and related support systems to minimize the project's impact on the public waters.

(g) The commissioner shall have the authority to grant variances from the minimum standards of this section. Such authority shall be exercised subject to the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b).

Source. 1991, 303:1. 1992, 235:12-18, 28, I. 1994, 383:7-14. 1995, 32:1, eff. April 24, 1995; 206:2, eff. Aug. 11, 1995; 299:16, eff. Jan. 1, 1996. 1996, 17:4, 5, eff. June 14, 1996; 100:1, eff. May 15, 1996; 228:66, 108, eff. July 1, 1996; 251:22, eff. Aug. 9, 1996; 296:52, 53, eff. Aug. 9, 1996.

**483-B:10 Nonconforming Lots of Record:**

Nonconforming, undeveloped lots of record that are located within the protected shoreland shall comply with the following restrictions, in addition to any local requirements:

I. Except when otherwise prohibited by law, present and successive owners of an individual undeveloped lot may construct a single family residential dwelling on it, notwithstanding the provisions of this chapter. Conditions may be imposed which, in the opinion of the commissioner, more nearly meet the intent of this chapter, while still accommodating the applicant's rights.

II. Building on nonconforming lots of record shall be limited to single family residential structures and related facilities, including, but not limited to, docks, piers, boathouses, boat loading ramps, walkways, and other water dependent structures, consistent with state law.

Source. 1991, 303:1. 1992, 235:19. 1994, 383:15, eff. July 1, 1994.

**483-B:11 Nonconforming Structures:**

I. Except as otherwise prohibited by law, nonconforming structures, erected prior to July 1, 1994, located within the protected shoreland may be repaired, renovated, or replaced in kind using modern technologies, provided the result is a functionally equivalent use. Such repair or replacement may alter the interior design or existing foundation, but no expansion of the existing footprint or outside dimensions shall be permitted. An expansion that increases the sewerage load to an on-site septic system, or changes or expands the use of a septic system or converts a structure to condominiums or any other project identified under RSA 485-A:29-44 and rules adopted to implement it shall require approval by the department. Between the primary building line and the reference line, no alteration shall extend the structure closer to the public water, except that the addition of a deck or porch is permitted up to a maximum of 12 feet towards the reference line.

4

The Comprehensive Shoreland Protection Act  
RSA 483-B

II. When reviewing requests for the redevelopment of sites that contain nonconforming structures erected prior to July 1, 1994, the commissioner shall review proposals which are more nearly conforming than the existing structures, and may waive some of the standards specified in RSA 483-B:9, so long as there is at least the same degree of protection provided to the public waters. For the purposes of this section, a proposal that is "more nearly conforming" means a proposal for significant changes to the location or size of existing structures that bring the structures to greater conformity, or a proposal for changes to other aspects of the property, including but not limited to stormwater management, wastewater treatment or traffic volume or flow, or both types of proposal which significantly improve wildlife habitat or resource protection.

Source. 1991, 303:1. 1992, 235:20. 1994, 383:16, 17, eff. July 1, 1994. 1996, 17:6, eff. June 14, 1996.

483-B:12 Shoreland Exemptions:

I. The governing body of a municipality may, in its discretion, request the commissioner to exempt all or a portion of the protected shoreland within its boundaries from the provisions of this chapter if the governing body finds that special local urbanization conditions exist in the protected shoreland for which the exemption is sought.

II. If the governing body of a municipality requests such an exemption, it shall submit evidence of existing and historical patterns of building and development in the protected shoreland. Such evidence shall address:

- (a) Current and past building density.
- (b) Commercial or industrial uses.
- (c) Municipal or other public utilities.
- (d) Current municipal land use regulations which affect the protected shoreland.
- (e) Any other information which the commissioner may reasonably require.

III. With the advice of the office of state planning, the commissioner shall approve or deny the request for an exemption and shall issue written findings in support of his decision. A request for an exemption shall be approved only if the municipality demonstrates, using the evidence required under paragraph II, that special conditions of urbanization exist along the portion of shoreland to be exempted.

IV. The state port authority may request an exemption under this section for all or a portion of any land purchased, leased, or otherwise acquired by it pursuant to RSA 271-A.

Source. 1991, 303:1.

483-B:13 Public Hearing and Notice to Abutter:

[Repealed 1992, 235:28, II, eff. Jan. 1, 1993.]

483-B:14 Rehearings and Appeals:

4

The Comprehensive Shoreland Protection Act  
RSA 483-B

Where the requirements of this chapter amend the existing statutory authority of the department or other agencies relative to certain established regulatory programs and shall be enforced under these established regulatory programs, the existing procedures governing contested cases and hearings and appeals regarding these requirements shall apply. Where requirements of this chapter are new and do not amend existing statutory authority relative to any established regulatory programs, the procedures set forth in RSA 541-A:31 for contested cases shall apply.

Source. 1991, 303:1. 1992, 235:24. 1994, 412:51, eff. Aug. 9, 1994.

**483-B:15 Gifts, Grants and Donations:**

The department is authorized to solicit, receive, and expend any gifts, grants, or donations made for the purposes of this chapter. Gifts of land or easements shall be assigned to the department of resources and economic development for management or assignment to another state agency or other public body, as appropriate.

Source. 1991, 303:1, eff. July, 1994.

**483-B:16 Assistance to Municipalities; Office of State Planning:**

The office of state planning may assist municipalities with the implementation of local ordinances under this chapter, upon the request of an individual municipality.

Source. 1991, 303:1, effective July 1, 1994.

**483-B:17 Rulemaking:**

The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

- I. The content and structure of all forms, applications and permits to be received or issued by the department under this chapter, including information and other materials to be submitted by an applicant.
- II. Procedures for filing and review of requests for urbanized shoreland exemptions and standards for granting urbanized shoreland exemptions, including time frames for decisions.
- III. Enforcement of the minimum shoreland standards, including methods and timing of inspection and coordination with municipalities.
- IV. Procedures and criteria for the placement of small accessory structures such as storage sheds and gazebos, the size, placement, and construction of which is consistent with the intent of this chapter, between the reference line and the primary building line.
- V. Criteria governing the assessment of administrative fines.
- VI. Criteria governing low phosphate, slow release nitrogen fertilizer.
- VII. Criteria governing maintaining a healthy, well-distributed stand of trees, saplings, shrubs and ground covers.
- VIII. A methodology for identifying unsafe trees.

4

The Comprehensive Shoreland Protection Act  
RSA 483-B

IX. Defining the opening for building construction.

X. Definitions of terms not defined in this chapter.

Source. 1991, 303:1. 1992, 235:25. 1994, 383:18, eff. July 1, 1994. 1996, 100:2, eff. May 15, 1996.

**483-B:18 Penalties:**

I. The following shall constitute a violation of this chapter:

- (a) Failure to comply with the provisions of this chapter.
- (b) Failure to obey an order of the commissioner or a municipality issued relative to activities regulated or prohibited by this chapter.
- (c) Misrepresentation by any person of a material fact made in connection with any activity regulated or prohibited by this chapter.

II. Any person who violates this chapter and any person who purchases land affected by a violation of this chapter who knew or had reason to know of the violation shall be liable for remediation or restoration of the land affected.

III. Persons violating the provisions of this chapter shall be subject to the following:

- (a) Upon petition of the attorney general or of the municipality in which the violation occurred, the superior court may levy upon any person violating this chapter a civil penalty in an amount not to exceed \$20,000 for each day of each continuing violation. The superior court shall have jurisdiction to restrain a continuing violation of this chapter, and to require remediation.
- (b) Any person who knowingly violates any provision of this chapter, or any rule adopted or order issued under this chapter or any condition of any permit issued under this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person, and, notwithstanding RSA 651:2, may in addition to any sentence of imprisonment, probation or conditional discharge, be fined not more than \$20,000 for each violation if found guilty pursuant to this section. Each day of violation shall constitute a separate offense.
- (c) The commissioner, after notice and hearing pursuant to RSA 541-A, shall impose an administrative fine of up to \$5,000 for each offense upon any person who violates this chapter. Rehearings and appeals relating to such fines shall be governed by RSA 541. Imposition of an administrative fine under this section shall not preclude the imposition of further civil or criminal penalties under this chapter.
- (d) Notwithstanding of the \$5000 fine limit in subparagraph (c), the administrative fine for each repeat violation of this chapter may be multiplied by a factor of 2 for every previous violation committed by the person or entity.

Source. 1991, 303:1. 1994, 383:19, eff. July 1, 1994.

**483-B:19 Applicability:**

4

The Comprehensive Shoreland Protection Act  
RSA 483-B

I. Subject to paragraph II, the provisions of this chapter shall not apply to any applicant whose land is in a municipality that has adopted a shoreland protection ordinance under RSA 674:16, the provisions of which are at least as stringent as similar provisions in this chapter. The director of the office of state planning shall certify to the commissioner that the provisions of a local ordinance are at least as stringent as similar provisions in this chapter.

II. If a municipality has a local ordinance that does not contain a counterpart to all of the provisions of this chapter, the more stringent measure shall apply.

Source. 1991, 303:1. 1992, 235:26. 1994, 383:20, eff. July 1, 1994.

**483-B:20 Designated Rivers:**

The provisions of this chapter shall not apply to rivers or river segments designated by the general court and approved for management and protection under RSA 483 prior to January 1, 1993 with the exception of the Connecticut River.

Source. 1994, 383:21, eff. July 1, 1994.

4

## Shoreland Protection Administrative Rules

### Env-Ws 1400

#### Table of Contents

CHAPTER Env-Ws 1400 SHORELAND PROTECTION	18
Part Env-ws 1401 Purpose And Applicability	18
Part Env-ws 1402 Definitions	18
Part Env-ws 1403 Enforcement Of The Natural Woodland Buffer	18
Part Env-ws 1404 Erosion And Sedimentation	20
Part Env-ws 1405 Placement And Size Of accessory Structures	20
Part Env-ws 1406 Nonconforming Structures	20
Part Env-ws 1407 Variance From The Minimum Standards	21
Part Env-ws 1408 Urbanized Shoreland Exemption	21
Part Env-ws 1409 Shoreland Protection Certification	22
Administrative Rule Changes to Part Env-Ws 1002:	23
Administrative Rule Changes to Part Env-Ws 1003.04:	24
Administrative Rule Changes to Part Env-Ws 1003.05:	24
chapter Env-c 611 Fines Relating To Development Within The Protected Shoreland	24

Shoreland Protection Administrative Rules  
Part Env-Ws 1400

**CHAPTER Env-Ws 1400 SHORELAND PROTECTION**

Statutory Authority: RSA 483-B:17

**Part Env-ws 1401 Purpose And Applicability**

Env-Ws 1401.01 Purpose. The purpose of these rules is to implement RSA 483-B, the comprehensive shoreland protection act.

Env-Ws 1401.02 Applicability. These rules shall apply to all land areas subject to RSA 483-B, namely, all land areas:

- (a) Within 250 feet, horizontal distance, of the natural mean high water level of natural fresh water bodies without artificial impoundments listed in the official list of public waters published by the department;
- (b) Within 250 feet, horizontal distance, of the water line at full pond as determined by the elevation of the top of the impoundment structure of artificially impounded fresh water bodies listed in the official list of public waters;
- (c) Within 250 feet, horizontal distance, of the highest observable tide line of coastal waters; and
- (d) Within 250 feet, horizontal distance, of the ordinary high water mark of rivers, meaning all year-round flowing waters of fourth order or higher, as shown on the current version of the U.S. Geological Survey topographic maps as defined in RSA 483-B:4, XVI (c), excluding those land areas exempted by RSA 483-B:20.

**Part Env-ws 1402 Definitions**

Env-Ws 1402.01 Statutory Definitions. Any term used in these rules shall have the same meaning as in RSA 483-B:4.

Env-Ws 1402.02 Additional Definitions. In addition to the statutory definitions, the following definitions shall apply:

- (a) "Fertilizer" means any substance containing one or more recognized plant nutrient(s) which is used primarily for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth.
- (b) "Non-conforming lot" means a lot that does not meet current state or local subdivision, zoning, or other lot size or setback requirements.

**Part Env-ws 1403 Enforcement Of The Natural Woodland Buffer**

Env-Ws 1403.01 Well-Distributed Stand. If ordered by the department to restore a well-distributed stand of trees, saplings, shrubs and ground cover, the violator shall submit a restoration plan for approval that describes:

4

Shoreland Protection Administrative Rules  
Part Env-Ws 1400

- (a) The species of plants proposed for replanting;
- (b) The number of plants proposed for replanting;
- (c) The basal area of the trees proposed for replanting;
- (d) The existing trees within the natural woodland buffer; and
- (e) The existing and proposed structures, including but not limited to the primary building, accessory structures, and water-dependent structures.

Env-Ws 1403.02 Plan Approval. The department shall approve plans that meet the following criteria:

- (a) Replacement plantings shall meet one of the following:
  - (1) Replacement plants shall consist of the species that are as close as possible to the species present prior to vegetation removal; or
  - (2) At least 75 percent of the replacement plants shall be chosen from the natural woodland buffer plantings list included as appendix D.
- (b) Replacement plants shall have spatial and compositional diversity that replicates a natural woodland buffer.
- (c) Replacement and remaining trees shall comprise at least 50 percent of the basal area that existed prior to cutting.
- (d) Replacement trees shall be placed no further apart than 10 feet on center.
- (e) There shall be no changes to surface drainage unless a sediment and erosion control plan is submitted and approved. The sediment and erosion control plan shall be submitted with the restoration plan and shall meet the requirements specified in Env-Ws 415.

Env-Ws 1403.03 Opening for Building Construction.

- (a) Subject to (b) below, the opening for building construction shall be measured on the horizontal plane as the area extending 25 feet from access roads, driveways and other impervious surfaces, septic systems and all structures except accessory structures.
- (b) Between the primary building line and the reference line, the opening shall be measured on the horizontal plane as the area extending 15 feet from access roads, driveways and other impervious surfaces, septic systems and all structures except accessory structures .
- (c) The opening for construction of an accessory structure shall be measured as the area extending 10 feet outward from the footprint of the accessory structure.
- (d) The property owner shall stake the building(s) footprint(s) in the field.

Env-Ws 1403.04 Trees Outside Building Construction Opening.

- (a) Any tree located outside the opening for building construction shall be counted in the basal

Shoreland Protection Administrative Rules  
Part Env-Ws 1400

- area percentage limitation calculations, subject to RSA 483-B:9, V(a)(2)(D).
- (b) For purposes of determining compliance with RSA 483-B:9, V(a)(2)(A), only those areas outside the opening for building construction shall be considered.

**Part Env-ws 1404 Erosion And Sedimentation**

Env-Ws 1404.01 Compliance. Pursuant to RSA 483-B:9, V(c), construction, earth moving or other significant alteration of the characteristics of the terrain within the protected shoreland shall comply with RSA 485-A:17 and Env-Ws 415.

**Part Env-ws 1405 Placement And Size Of accessory Structures**

Env-Ws 1405.01 Applicability. Requirements of this part shall apply to accessory structures located between the reference line and the primary building line, including but not limited to storage sheds, wells, pump houses and gazebos.

Env-Ws 1405.02 Construction. Accessory structures shall be:

- (a) Constructed only if allowed by local zoning; and
- (b) Constructed in accordance with the local building code.

Env-Ws 1405.03 Status. Accessory structures shall:

- (a) Not exceed 20 feet in height; and
- (b) Have a footprint no larger than 150 square feet.

Env-Ws 1405.04 Setback.

- (a) Subject to (b) below, all accessory structures built after the effective date of these rules shall be set back at least 20 feet from the reference line.
- (b) The minimum 20-foot setback shall not apply to structures that require direct access to the water as an operational necessity, including but not limited to piers, docks, boathouses, retaining walls, pump houses, wells and other functionally water-dependent structures.

Env-Ws 1405.05 Placement. No accessory structure shall be built on land having greater than 25% slope.

**Part Env-ws 1406 Nonconforming Structures**

Env-Ws 1406.01 Replacement of Nonconforming Primary Buildings Damaged by Accidental Means. Any nonconforming structure damaged by accidental means shall be rebuilt, repaired or removed within one year of the date of the accident.

Env-Ws 1406.02 Replacement of Nonconforming Primary Buildings Other Than Those Damaged By Accidental Means. The replacement of any nonconforming primary structure shall be at least as far back as the primary building line.

4

Shoreland Protection Administrative Rules  
Part Env-Ws 1400

Env-Ws 1406.03 Decks and Porches of Nonconforming Structures. Decks and porches located between the primary building line and the reference line shall not be converted to become part of the primary living space.

**Part Env-ws 1407 Variance From The Minimum Standards**

Env-Ws 1407.01 Information required for a variance request. Each applicant for a variance under RSA 483-B:9, V(g) shall provide the following information on a form obtained from the department:

- (a) Name of landowner;
- (b) Mailing address of landowner;
- (c) Location of subject parcel and tax map number;
- (d) Description of the lot with sketch showing surface waters and the reference line;
- (e) A specific reference to the chapter or rules for which a variance is being sought;
- (f) A full explanation of the development for which a variance is sought;
- (g) Pursuant to RSA 483-B:9, V(g), the reason for requesting a variance based on the criteria which govern the grant of a variance by a zoning board of adjustment under RSA 674:33, I(b); and
- (h) Evidence that the criteria specified in (g) above have been met. Env-Ws 1407.03 Local Notification. Each applicant for a variance shall submit a copy of the information required by Env-Ws 1407.02 to the local governing body, at the time of submittal to the department.

Env-Ws 1407.04 Findings. The department shall approve a request for variance upon finding that the proposal is adequate to ensure that the intent of RSA 483-B is met and that the criteria for granting a variance under RSA 674:33 have been met.

Env-Ws 1407.05 Reason for Denial. No variance shall be granted which, in the judgement of the department, contravenes the intent of RSA 483-B or any rule.

**Part Env-ws 1408 Urbanized Shoreland Exemption**

Env-Ws 1408.01 Exemption. Pursuant to RSA 483-B:12(I), the governing body of a municipality may, in its discretion, request the commissioner to exempt all or a portion of the protected shoreland within its boundaries from the provisions of this chapter if the governing body finds that special local urbanization conditions exist in the protected shoreland for which the exemption is sought.

Env-Ws 1408.02 Evidence.

- (a) Pursuant to RSA 483-B:12(II), the municipality shall present evidence of existing and historical patterns of building and development in the protected shoreland, which shall address

4

Shoreland Protection Administrative Rules  
Part Env-Ws 1400

the following:

- (1) Current and past building density;
  - (2) Current commercial or industrial uses;
  - (3) Municipal or other public utilities; and
  - (4) Current municipal land use regulations which affect the protected shoreland.
- (b) The municipality shall also provide:
- (1) The number of structures in sight from the waterbody;
  - (2) Density allowed under current local zoning ordinances;
  - (3) Extent of non-residential land use currently existing; and
  - (4) If available, a recent aerial photograph of the area.

Env-Ws 1408.03 Delivery. The applicant shall send the evidence directly to the office of state planning with a copy to the commissioner.

Env Ws 1408.04 Time Frames for Decisions.

- (a) Provided the office of state planning notifies the applicant in writing of the reasons for the extension, the office of state planning may take up to an additional 30 working days to perform the review.
- (c) The commissioner shall approve the request if the evidence required in Env-Ws 1408 shows that the municipality has existing and historical patterns of building and development in the protected shoreland.
- (d) The commissioner shall issue findings in support of the decision within 30 working days from receipt of the recommendation.

**Part Env-ws 1409 Shoreland Protection Certification**

Env-Ws 1409.01 Other Department Permits.

(a) Pursuant to RSA 483-B:6, any person applying for any of the following permits shall submit the certification application as specified in (b):

- (1) Wetlands permit pursuant to RSA 482-A.
- (2) Individual sewage disposal system pursuant to RSA 485-A:29.
- (3) Subdivision permit pursuant to RSA 485-A:29.
- (4) Alteration of terrain permit pursuant to RSA 485-A:17.

(b) Applicants for any permit listed in (a) above shall, at the time of filing the permit application, also provide the following information on a form obtained from the department:

4

Shoreland Protection Administrative Rules  
Part Env-Ws 1400

- (1) Name of agent or applicant;
  - (2) Town in which the project is proposed;
  - (3) The tax map, block, and lot number;
  - (4) Subdivision name; and
  - (5) The answers to the following questions:
    - A. "Will the project for which a permit is hereby requested involve construction, land clearing, or other development within the protected shoreland as defined by RSA 483-B: 4, XV? Answer yes or no.";
    - B. "If the project involves construction, land clearing, or other development within the protected shoreland, will it meet or exceed the development standards of RSA 483-B? Answer yes or not applicable."; and
  - (6) "If the answer to b. above is "not applicable", state why."
- (c) The applicant shall agree to and sign the following: "As owner or agent for the owner of the subject property, by my signature below I certify that: My responses to questions above are correct to the best of my knowledge. I am familiar with the requirements of RSA 483-B and have knowledge of the development activities which will be undertaken. The plans and other information submitted with this permit application provide a complete description of the project and demonstrate how compliance will be accomplished. I understand that false information given in this certification may result in revocation of any permit granted by the department of environmental services as a result of this application. I also understand that RSA 483-B:18 provides that violations subject the responsible party to remediation or restoration of the land affected, fines up to \$20,000 for each day of continuing violation, imprisonment and other penalties."

**Administrative Rule Changes to Part Env-Ws 1002:**

Env-Ws 1002.28 "Natural woodland buffer" means "natural woodland buffer" as defined by RSA 483-B:4, XI.

Env-Ws 1002.31 "Primary building line" means "primary building line" as defined in RSA 483-B:9, II(b).

Env-Ws 1002.32 "Protected shoreland" means "protected shoreland" as defined by RSA 483-B: 4, XV.

Env-Ws 1002.35 "Reference line" means "reference line" as defined by RSA 483-B:4, XVII.

Env-Ws 1002.36 "Restrictive layer" means a soil horizon that restricts the downward flow of water and is uncharacteristic of the soil layers above and below, such as a layer of soil with a consistence of firm or very firm, cemented horizons, or stratified layers of silt, loam or clay within the soil profile.

4

Shoreland Protection Administrative Rules  
Part Env-Ws 1400

Env-Ws 1002.39 "Shoreland frontage" means the average of the distances of the actual natural shoreline footage and a straight line drawn between property lines.

**Administrative Rule Changes to Part Env-Ws 1003.04:**

- (r) If the lot is within the protected shoreland, the following additional information :
- (1) Length of shoreland frontage, if the development is residential;
  - (2) Lot width, if the development is commercial; and
  - (3) The topography of an area equal to or greater than the lot size determined by Env-Ws 1005.02 for each lot.

**Administrative Rule Changes to Part Env-Ws 1003.05:**

- (ae) If the lot is within the protected shoreland the following additional information :
- (1) The reference line;
  - (2) The primary building line;
  - (3) Distance and location of nearest surface waters in relation to disposal system unless the nearest surface waters is greater than 125 feet away; and
  - (4) A designation on the plan of the limits of the natural woodland buffer.

**Chapter Env-c 611 Fines Relating To Development Within The Protected Shoreland**

Statutory Authority: RSA 483-B:17

**Env-C 611.01 Definitions.**

Any term used in these rules shall have the same meaning as in the law or rule to which the fine relates.

**Env-C 611.02 Water Quality Violations.**

Determination of a water quality violation shall be done in accordance with Env-Ws 430.

**Env-C 611.03 Fines Relating to Salt Storage Yards, Auto Junk Yards and Solid or Hazardous Waste facilities.**

For violations relating to RSA 483-B:9 regarding salt storage yards, auto junk yards, and solid or hazardous waste facilities, the fine shall be \$2,000 if not resulting in water quality violations and \$2,500 if resulting in water quality violations.

**Env-C 611.04 Fines Relating to Construction of Primary Structures.**

- (a) For violations relating to construction of a primary structure between the reference line and the primary building line, the fine shall be \$3,000.

4

Shoreland Protection Administrative Rules  
Part Env-Ws 1400

(b) For violations relating to construction of an addition that extends the structure closer to the public waters, except the addition of an open deck or porch up to a maximum of 12 feet towards the reference line pursuant to RSA 483-B:11, II, the fine shall be \$2000.

(c) For violations relating to the enclosure of an open deck or porch, located between the reference line and the primary building line, the fine shall be \$2000.

Env-C 611.05 Fines Relating to Fertilizer Use Within the Protected Shoreland.

For use of fertilizers not in accordance with RSA 483-B, the fine shall be \$500 if not resulting in water quality violations and \$1000 if resulting in water quality violations.

Env-C 611.06 Fines Relating to the Natural Woodland Buffer.

(a) For building construction of an accessory structure in the natural woodland buffer zone not in accordance with Env-Ws 1400, the fine shall be \$2,000.

(b) For each stump removed within 50 feet of the reference line, the fine shall be \$1,000 if not resulting in water quality violations and \$1,500 if resulting in water quality violations.

(c) For failure to maintain a well-distributed stand within the 150 foot natural woodland buffer zone the fine shall be \$4,000 if not resulting in water quality violations and \$4,500 if resulting in water quality violations.

(d) For failure to maintain a 50% basal area within the 150 foot natural woodland buffer zone the fine shall be \$4,000 if not resulting in water quality violations and \$4,500 if resulting in water quality violations.

Env-C 611.07 Fines Relating to Failure to Comply With An Order.

For failing to comply with a department order, the fine shall be \$2,000.

Env-C 611.08 Failure to Pay Fines.

For failure to pay a fine imposed in accordance with these rules, the fine shall be 10% of the amount of the originally-imposed fine per month or portion thereof for any part of an unpaid fine. Fines for failure to pay a fine shall be imposed in accordance with these rules.

Env-C 603.02 Fines Relating to Alteration of Terrain.

For violations relating to RSA 485-A:17, Env-Ws 415, RSA 483-B, and Env-Ws 1400 regarding alteration of terrain, the amount of the administrative fine shall be as follows:

(g) For construction, earth moving or other activities resulting in the significant alteration of 50,000 sq. ft. or greater of the terrain within the protected shoreland without a permit:

(1) \$3,000 if the activities have not caused a water quality violation; and

(2) \$3,500 if the activities have caused a water quality violation;

(h) For construction, earth moving or other activities within the protected shoreland for which

4

Shoreland Protection Administrative Rules  
Part Env-Ws 1400

a permit has been obtained but which is not in conformance with the conditions of the permit:

- (1) \$2,000 if the activities have not caused a water quality violation; and
- (2) \$2,500 if the activities have caused a water quality violation;
- (i) Failure to design and construct new structures to prevent erosion of exposed soils:
  - (1) \$1,000 if the activities have not caused a water quality violation; and
  - (2) \$1,500 if the activities have caused a water quality violation.

Env-C 604.01 Fines Relating to Subdivisions.

For violations of RSA 485-A [and], Env-Ws 1000, RSA 483-B, and Env-Ws 1400 relating to subdivisions, the amount of the administrative fine shall be as follows:

- (e) For commencing road construction on, clearing vegetation from, placing fill on or otherwise altering a parcel of land within the protected shoreland for which plans are required to be submitted pursuant to RSA 483-B:9 prior to obtaining approval of the subdivision plan, \$2,000.

Env-C 604.02 Fines Relating to Septic Systems.

For violations of RSA 485-A, Env-Ws 1000, RSA 483-B:9, and Env-Ws 1400 relating to septic systems, the amount of the administrative fine shall be as follows:

- (r) For failure to meet the required setback requirements for all new leaching portions of new septic systems, \$2,000.

## Index

### A

- Abutter
  - Defined 3
- Accessory structure 9, 14, 19, 20
  - Defined 3
  - Fines 25
  - Footprint 20
  - Height 20
  - Opening 19
  - Setback 20
  - Slope 20
  - Water Dependant 20
- Agriculture 3, 8, 9
- Alteration of nonconforming structures 12
- Alteration of Terrain 7, 11
  - Certification 22
  - Fines 25
- Appeals 13-16, 15
- Applicability 15-16
- Applications 14
- Aquatic life 2
- Archaeological and historical resources 2
- Artificial impoundments 5, 18
  - Reference Line Defined 5
- Automobile junk yards 8
  - Fines 24

### B

- Bank alteration 7
- Basal area 9, 19
  - Defined 3
  - Fines 25
- Beach replenishment 7
- Birds, Habitat 2
- Breakwaters 8

### C

- Cease and desist orders 8
- Chemical pollution 9
- Civil penalties 15
- Cluster subdivision 11
- Coastal waters 18
  - Defined 5
  - Reference Line Defined 5
- Coastal wetlands 2
- Commercial fishing 2

- Commissioner
  - Defined 4
- Common ownership 12
- Conditions 7
- Condominium development 11
- Conflict with other local or state laws 3
- Connecticut River 16
- Consistency 3-16
- Construction 11
  - Fines 24, 25, 26
- Conversion 21
- Court, superior 15

### D

- Dam Safety 9
- Dead trees 10
- Decks 12, 21
  - Fines 25
- Definitions 3-16, 18, 23
- Department
  - Defined 4
- Designated Rivers 16
- Development outside the protected shoreland 8
- Diseased trees 10
- Disturbed area
  - Defined 4
- Docks 8
- Donations 14
- Drainage structures 9

### E

- Earth excavation 7
- Economic development 3
- Enforcement 6-16, 14
  - By Commissioner 6
  - Woodland buffer 6
- Erosion 2, 9, 10, 19, 20
  - Fines 26
- Exemptions 13-16
- Expansion of nonconforming structures
  - Fines 25

### F

- Fallen trees 10
- Felony 15
- Fertilizer 8, 14
  - Defined 18
  - Fines 25
- Fines 14, 24
  - Administrative 15

## Index

Failure to pay 25  
 Fish habitat 9  
 Fish spawning grounds 2  
 Flooding 2  
 Forest management 9  
 Forms 14  
 Fourth order or higher streams 5, 10, 18  
   Defined 5  
   Reference Line Defined 5  
 Fresh water 4

## G

General Court 2  
 Gifts 14  
 Grants 14  
 Grass 8  
 Great Bay Estuary 5  
 Great ponds 5  
 Ground cover 9, 18  
   Defined 4

## H

Hazardous waste facilities 8  
   Fines 24  
 Healthy well-distributed stand 9, 18  
   Fines 25  
 Hydro electric facilities 9

## I

Individual building lots 11  
 Inspection authority 6

## J

Joint code enforcement 8  
 Jurisdiction 15

## L

Land use control ordinances 7  
 Lawns 8  
 Limestone 8  
 Local Authority  
   Approvals 7  
   Building code 20  
   Coordination 6  
   Enforcement 6  
   Ordinances 14, 16  
   Participation 7-16  
   Permits 3  
   Urbanization 13

Lot of record  
   Defined 4  
 Lot width 24

## M

Minimum lot size 11-12  
 Minimum standards 2-16, 8-16  
 Misdemeanor 15  
 Misrepresentation 15  
 Monitoring wells 9  
 Municipalities, Assistance to 14  
 Municipality 13  
   Defined 4  
 Municipal authority 7-16  
 Municipal sewers 11

## N

Native or naturalized species 19  
 Natural beauty 3  
 Natural fresh water bodies 18  
   Reference Line Defined 5  
 Natural Resources Conservation Service 10  
 Natural woodland buffer 9-12, 18  
   Defined 4, 23  
   Fines 25  
 Nitrogen fertilizer 8  
 Non-residential development 11  
 Nonconforming Lots of Record 12-16  
   Defined 18  
 Nonconforming Structures 20  
   Accidental damage 20  
   Demolition 20  
   Replacement of 20  
 Nonconforming structures 12-16  
   Expansion 12  
   Renovation 12  
   Repair 12  
   Defined 5  
   Replace in kind 12  
   Defined 5  
 Nutrients 9

## O

Office of State Planning 14, 16  
 On-site inspections 7-16  
 Opening for building construction 10, 19  
 Order 7, 15  
   Failure to comply 25  
 Ordinary high water mark  
   Defined 4

## Index

### P

Patios 12, 21  
    Fines 25  
Penalties 15-16  
Penalties, criminal 15  
Permits 7-16  
Person  
    Defined 4  
Piers 8  
Pipes 8  
Plan Approval 19  
Porches 12, 21  
    Fines 25  
Port authority 13  
Primary building line 8, 19  
    Defined 4, 23  
Primary structures 8, 19  
    Defined 4  
    Fines 24  
Prior approval 7-16  
Private water supply facilities 8  
Protected shoreland 9  
    Defined 4, 23  
Public health, safety, and the general welfare 2  
Public interest 2  
Public utility lines 9  
Public waters 2  
    Defined 4  
Public water supply facilities 8  
Pump houses 20  
Pump stations 8  
Purpose 2, 18

### R

Redevelopment 13  
Reference line 10  
    Defined 5, 23  
Remediation 15, 19  
Removal or removed  
    Defined 5  
Repeat violation  
    Defined 5  
Replacement plantings 19  
Replacement septic systems 10  
    Replacement system defined 5  
Replanting 19  
Residential units 11  
    Defined 6  
Restrictive layers 10  
    Defined 23

Root systems 9, 10  
Rulemaking 14-16  
Rules 18  
Rule changes 23, 24  
Runoff 11

### S

Salt storage 8  
    Fines 24  
Sapling 9, 18  
    Defined 6  
Scenic beauty 3  
Scientific study 3  
Sediment 19  
Septic systems 7, 10-12, 12  
    Fines 26  
    Setback 10  
    Tanks 10  
Sewage treatment facilities 8  
Shoreland frontage 11, 24  
    Defined 6, 24  
Shoreland Protection Certification 22  
Shrub 18  
    Defined 6  
Solid waste facilities 8, 9  
    Fines 24  
Species 19  
State agencies 3  
Statutory Authority 18  
Storage sheds 20  
Strahler method 5  
Structures 10  
    Defined 6  
    Fines 24  
Stumps 10  
    Fines 25  
Subdivision 7, 10, 11  
    Certification 22  
    Defined 6  
    Fines 26  
Subsurface Systems Bureau 7, 10  
    Certification 22

### T

Tidal rivers 5  
Topography 24  
Tree 9, 18  
    Defined 6  
Tree canopy 9  
Turbidity 9

P-T

# Index

## U

- Understory 9
- Unsafe trees 10
- Urbanization
  - Defined 6
- Urbanized shoreland exemptions 14, 21
  - Delivery 22
  - Evidence 21
  - Time frames for decisions 22

## V

- Variances 12, 21
  - Approval 21
  - Denial 21
  - Findings 21
  - Local notification 21
- Violation 15, 18

## W

- Waste permit 9
- Waterfront parcels 12
- Waters of the state 8
- Water dependent structures 7, 8, 12, 19, 20
  - Defined 6
- Water pollution 2
- Water quality violations
  - Fines 24
- Water supply intakes 8
- Water supply reservoir watershed management 9
- Water temperatures 9
- Water treatment facilities 8
- Wells 20
- Wetlands Bureau 7, 8
  - Permit Certification 22
- Wharf 8
- Wildlife habitat 3, 9, 10
- Wildlife habitats 2

## Z

- Zoning board of adjustment 12, 21

4

Shoreland Protection  
Environmental  
Fact Sheet

SP-6

1997

**Minimum Shoreland Protection Standards, RSA 483-B**

**LIMITS WITHIN THE PROTECTED SHORELAND**

250 ft

**Prohibited Uses (RSA 483-B:9, II)**

- Establishment/expansion of salt storage yards, auto junk yards, solid waste & hazardous waste facilities.
- Use low phosphate, slow release nitrogen fertilizer from 250 feet to 25 feet.

**Uses Requiring State Permits**

- Public water supply facilities (RSA 483-B:9, III)
- Public water & sewage treatment facilities (RSA 483-B:9, IV)
- Public utility lines (RSA 483-B:9, IV-b)
- Existing solid waste facilities (RSA 483-B:9, IV-c)
- All activities regulated by the DES Wetlands Bureau per RSA 482-A (RSA 483-B:9, II(c))

**Other Restricted Uses**

- All new lots, including those in excess of 5 acres, are subject to subdivision approval by DES. (RSA 483-B:9, V(b)(1))
- Setback requirements for all new septic systems are determined by soil characteristics. (RSA 483-B:9, V(b)(2))
- Minimum lot size in areas dependent on septic systems determined by soil type. (RSA 483-B:9, V(e)(1))
- Alteration of Terrain Permit standards reduced from 100,000 square feet to 50,000 square feet. (RSA 483-B:6, I(d))
- Total number of residential units in areas dependent on on-site sewage & septic systems, not to exceed 1 unit per 150 feet of shoreland frontage. (RSA 483-B:9, V(e)(2))

**NATURAL WOODLAND BUFFER RESTRICTIONS (RSA 483-B:9, V(a))**

150 ft

- Where existing, a natural woodland buffer must be maintained.
- Tree cutting limited to 50% of the basal area of trees, and 50% of the total number of saplings in a 20 year period. A healthy, well-distributed stand of trees, saplings, shrubs, and ground covers must be maintained.
- Stumps and their root systems must remain intact in the ground within 50 feet of the reference line.
- The opening for building construction is limited to 25 feet outward from the building, septic system, and driveway.
- The opening for accessory structures is limited to 10 feet outward from the footprint.

**NEW SEPTIC SYSTEM LEACHFIELD SETBACKS (RSA 483-B:9, V(b)(2))**

- 125 feet where soil down gradient of leachfield is porous sand & gravel.
- 100 feet where soil maps indicate presence of soils with restrictive layers within 18 inches of natural soil surface.
- 75 feet where soil map indicates presence of all other soil types.
- 75 feet minimum setback from rivers.

125 ft  
100 ft  
75 ft

**PRIMARY BUILDING LINE\***

- Primary structure setback 50 feet from the reference line. (RSA 483-B:9, II(B))
- Fertilizer use is prohibited within 25 feet of reference line. (RSA 483-B:9, II(d))
- Accessory structure setback 20 feet from the reference line. (EnvWs 1405.04)

50 ft  
25 ft  
20 ft



# CITY OF MANCHESTER

## Office of the City Clerk



Leo R. Bernier  
City Clerk

Carol A. Johnson  
Deputy City Clerk


Paula L-Kang  
Deputy Clerk  
Administrative Services

Matthew Normand  
Deputy Clerk  
Licensing & Facilities

Patricia Piecuch  
Deputy Clerk  
Financial Administration

### MEMORANDUM

To: R. MacKenzie  
Director of Planning

From:   
Leo R. Bernier  
City Clerk

Date: February 3, 2005

Re: Shoreland Protection Act

On January 24, 2005 at a meeting of the Committee on Bills on Second Reading, it was voted to table the above-referenced item until such time as you have been able to address the Committee.

Enclosed for your review is a copy of an excerpt of the minutes regarding this matter.

Enclosure

pc: P. Goucher

Chairman Lopez addressed item 8 of the agenda:

8. Shoreland Protection Act.

Alderman DeVries moved for discussion. Alderman Roy duly seconded the motion. There being none opposed, the motion carried.

Alderman DeVries stated this is actually an item, I believe, I had asked sent to this Committee. Bob MacKenzie was going to review and make some recommendations to us and I don't see him here tonight, so I would move to table at this time to coordinate with the Planning Director at a future meeting.

Alderman Roy stated a question for Alderman DeVries. Didn't Bob give us, the full Board, a presentation on this recently or was that Lands and Buildings.

Alderman DeVries stated he did give a full presentation. There had been, after the presentation, some discussion about whether or not we should look at any changes or amendments and that's why it was decided to send it to this Committee. City Clerk, is there anything that you.

Deputy City Clerk Johnson replied it was referred to the Committee and I think at this point you probably want to address questions to Mr. MacKenzie.

Chairman Lopez stated I think there was one area/item that you were looking at, weren't you...not the whole document but one item.

Alderman DeVries stated the document I don't think is anything this Committee needs to adopt. It was sent here for discussion and I just wanted him to review and comment so that we could have the discussion at this Committee level.

Alderman Sysyn duly seconded the motion to table item 8. There being none opposed, the motion carried.

**TABLED ITEMS**

On motion of Alderman Roy, duly seconded by Alderman Sysyn, it was voted to remove items 9, 10 and 11 from the table for discussion.

5

To the Board of Mayor and Aldermen of the City of Manchester:

The Committee on Human Resources/Insurance respectfully advises, after due and careful consideration, that it has approved Ordinance:

"Amending Sections 33.024, 33.025 & 33.026 (Solid Waste Compliance Officer) of the Code of Ordinances of the City of Manchester."

providing for the establishment of a new class specification, Solid Waste Compliance Officer, and is recommending same be referred to the Committee on Bills on Second Reading for technical review. The Committee further recommends that the issue of enforcement authority for this position be worked out with the Solicitor's Office and City staff.

(Aldermen Shea, Sysyn, Garrity and Forest voted yea; Alderman DeVries voted nay.)

At a meeting of the Board of Mayor and Aldermen  
held Oct. 4, 2005 on a motion of Ald. Shea  
duly seconded by Ald. Thibault the report  
of the Committee was accepted and its recommendations

~~(repealed)~~ ~~(deleted)~~

L. N. Bernier  
City Clerk

Respectfully submitted,

L. N. Bernier

Clerk of Committee

5  
City of Manchester  
New Hampshire

*In the year Two Thousand and Five*

AN ORDINANCE

"Amending Sections 33.024, 33.025 & 33.026 (Solid Waste Compliance Officer) of the Code of Ordinance of the City of Manchester."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

SECTION 33.024 CLASSIFICATION OF POSITION be amended as follows:

Establish new classification, Solid Waste Compliance Officer

SECTION 33.025 COMPENSATION OF POSITION be amended as follows:

Establish Solid Waste Compliance Officer, Grade 15, non-exempt

SECTION 33.026 CLASS SPECIFICATIONS be amended as follows:

Establish new class specification, Class Code 5611, Solid Waste Compliance Officer. (See attached).

This Ordinance shall take effect upon its passage and all Ordinances or parts of Ordinances inconsistent therewith are hereby repealed.



# City of Manchester, New Hampshire

## Draft Class Specification

This is a class specification and not an individualized job description. A class specification defines the general character and scope of responsibilities of all positions in a job classification, but it is not intended to describe and does not necessarily list every duty for a given position in a classification.

Class Title	Solid Waste Compliance Officer
Class Code Number	5611-15

### General Statement of Duties

Performs inspections and enforcement work relating to compliance with City Health and Sanitation Ordinances and City Health and City Highway Solid Waste Regulations; performs directly related work as required

### Distinguishing Features of the Class

The principal function of an employee in this class is to ensure adherence to existing City Ordinances relating to Health and Sanitation and to City Regulations. The work is performed under the supervision and direction of the Chief of Street Operations, Assistant Chief of Street Operations as well as the Refuse superintendent but considerable leeway is granted for the exercise of independent judgement and initiative. The nature of the work performed requires that an employee in this class establishes and maintains effective working relationships with other City employees, representatives of the Manchester Health Department and Building Department, and the public. The principal duties of this class are performed in both an indoor and outdoor work environments requiring access to all areas of the city

### Examples of Essential Work (illustrative only)

- Inspects, investigates and enforces City Health and Sanitation Ordinances and Regulations;

- 5
- Inspects, investigates and enforces City Highway Department Solid Waste Regulations;
  - Interprets and applies applicable ordinances and regulations;
  - Coordinates enforcement actions between the Health Department, Housing Code, Building Department and others;
  - Patrols city streets and alley ways and monitors activity to identify violations of applicable ordinances and regulations and takes appropriate actions to deal with the situation, including, issuing written warnings, issuing citations or rectifying the situation through a dialogue with all parties involved as warranted;
  - Receives complaints, researches ownership of property and records and performs inspections and conducts reexaminations to ensure any situation has been rectified
  - Prepares documentation to assist the City's legal Department in the prosecution of violators
  - Observes violations, takes pictures, issues notices, counsels code violators, prepares case files, pursues legal remedies, and oversees remedial actions for non-compliant properties;
  - Maintains thorough and accurate records of inspections activities;
  - Testifies on behalf of the City on legal proceedings
  - Responds to request for information from the public and neighborhood organizations on codes issues;
  - Reports possible violations outside of area of authority to the proper City Department or outside agency;
  - Keeps immediate supervisor and designated others fully and accurately informed concerning work progress, including present and potential work problems and suggestions for new or improved ways of addressing such problems;
  - Attends meetings, conferences, workshops and training sessions and reviews publications and audio-visual materials to become and remain current on the principles, practices and new developments in assigned work areas;
  - Participates at public meetings on solid waste compliance issues;
  - Responds to citizens' questions and comments in a courteous and timely manner;
  - Communicates and coordinates regularly with appropriate others to maximize the effectiveness and efficiency of interdepartmental operations and activities;
  - Performs other directly related duties consistent with the role and function of the classification.

**Required Knowledge, Skills and Abilities  
(at time of appointment)**

- Thorough knowledge of local and State codes, ordinances and regulations relating to health , sanitation and solid waste;
- Thorough knowledge of the codes relating to acceptable materials, policies and procedures;
- Ability to read and interpret local and State ordinances and regulations;
- Knowledge and ability to recognize and properly address hazardous materials and/or public health related materials in solid waste;

- 5
- Ability to communicate effectively with others, both orally and in writing, using both technical and non-technical language;
  - Ability to understand and follow oral and/or written policies, procedures and instructions;
  - Ability to prepare and present accurate and reliable reports containing findings and recommendations;
  - Ability to operate or quickly learn to operate a personal computer using standard or customized software applications appropriate to assigned tasks;
  - Ability to use logical and creative thought processes to develop solutions according to written specifications and/or oral instructions;
  - Ability to perform a wide variety of duties and responsibilities with accuracy and speed under the pressure of time-sensitive deadlines;
  - Ability and willingness to quickly learn and put to use new skills and knowledge brought about by rapidly changing information and/or technology;
  - Integrity, ingenuity and inventiveness in the performance of assigned tasks.

#### Acceptable Experience and Training

- Graduation from High School or completion of GED; and
- Some experience in related Sanitation and Refuse operations; or
- Any equivalent combination of experience and training which provides the knowledge, skills and abilities necessary to perform the work.

#### Required Special Qualifications

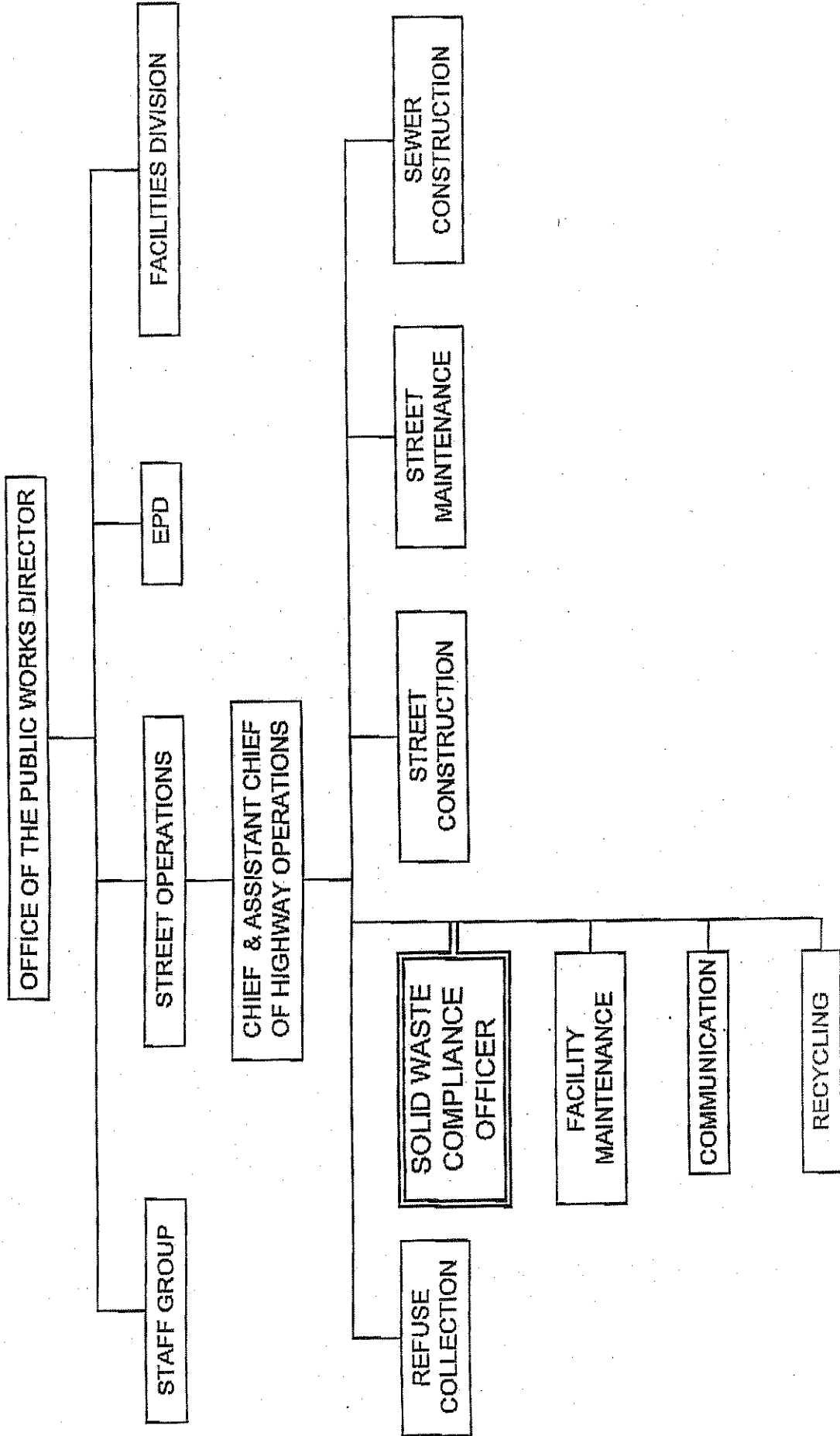
- Valid New Hampshire Driver's License.
- Level 2 Solid Waste Facility License

#### Essential Physical Abilities

- Sufficient clarity of speech and hearing or other communication capabilities, with or without reasonable accommodation, which permits the employee to communicate effectively;
- Sufficient vision or other powers of observation, with or without reasonable accommodation, which permits the employee to inspect residences for code requirements;
- Sufficient manual dexterity with or without reasonable accommodation, which permits the employee to operate testing instruments as necessary;
- Sufficient personal mobility and physical reflexes, with or without reasonable accommodation, which permits the employee to move about residences and other buildings as necessary to perform inspections.

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

# DEPARTMENT OF PUBLIC WORKS ORGANIZATIONAL CHART

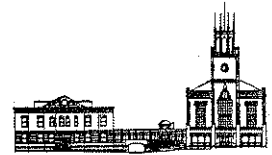




# CITY OF MANCHESTER

## Human Resources Department

One City Hall Plaza  
Manchester, New Hampshire 03101-4000  
Tel: (603) 624-6543 (V/TTY) • Fax: (603) 628-6065



September 6, 2005

Alderman Bill Shea, Chairman  
Human Resource and Insurance Committee  
City of Manchester  
One City Hall Plaza  
Manchester, New Hampshire 03101

Re: Request to Establish New Position

Dear Alderman Shea and Members of the Committee:

On behalf of Frank Thomas, P.E., Director, Highway Department, I am requesting the establishment of a new position and a new class specification. It is my understanding that the Aldermanic Solid Waste Committee recommended the establishment of this position.

According to Director Thomas, it is envisioned that his position will take the lead in coordinating compliance and enforcement actions relating to solid waste that are now covered by various departments on a complaint/problem basis. This position will be looking for violators of ordinances and regulations regarding solid waste. Further, it is envisioned that this position will identify hazardous materials in the waste stream such as asbestos. Additionally, this position will identify bug infestations in household materials to minimize exposure to collection crews. When appropriate and necessary, this position will also issue citations. He/she will be required to testify at legal proceeding as needed. The incumbent that is selected to fill this position will need to have excellent communications skills, a calm disposition and the ability to maintain good relations with residents.

Mr. Thomas provided this office with a draft class specification for our review and analysis. In addition to that, Christine Martinsen discussed the duties and responsibilities that are proposed as well as what the minimum requirements would be to be considered for this position. After reviewing this information and comparing the duties to other class specifications, I have determined that this position should be set at a salary grade 15. The Highway Department compared this proposed class specification with current classifications such as Zoning Inspector, salary grade 18, Building Inspector, salary grade 18, and Utility Inspector I, salary grade 17. In addition to those class specifications, I have compared the proposed position to other classifications at Highway as well as at other departments.

September 6, 2005

The proposed class specification for Solid Waste Compliance Officer states that one must possess a high school diploma or GED and some (three months) experience in related sanitation or refuse operations. In addition, the incumbent would be required to have a Level II Solid Waste Facility License. The class specs that Highway has compared this class spec to require a higher level of knowledge and specialized experience. For examples, the Building Inspector class specification requires an Associates Degree in Construction Technology as well as experience in construction and building inspections. He/she must also be certified as a Building Inspector. A Zoning Inspector must be licensed by the State and also have specific experience in inspection operations. The Utility Inspector I class specification requires considerable experience (five to six years) in construction projects as well as graduation from high school. A class specification that Highway did not consider would be that of an Animal Control Officer II, salary grade 15. The level of the duties and responsibilities that are assigned to this classification are quite similar to those that are being discussed here today. For example the specification requires that the incumbent have a high school diploma or GED and some (three months) experience in an animal related field, some public contact experience and some law enforcement experience. An incumbent is required to enforce local and state ordinances and laws, investigate complaints and issue citations as necessary, to work in distasteful circumstances, testify in court as necessary, etc. etc. The level of the duties that are proposed for the Solid Waste Compliance Officer class specification are very close to the level of duties that have been established for the Animal Control Officer class specification.

Therefore, I am requesting that you authorize the establishment of a new position and a new class specification of Solid Waste Compliance Officer at salary grade 15.

I am attaching a copy of the draft class specification as well as an organization chart.

Your favorable approval of these requests would be greatly appreciated.

Respectfully submitted,



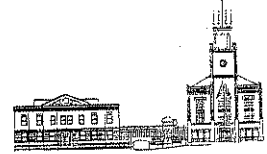
Virginia A. Lamberton  
Human Resources Director

Attachments



# CITY OF MANCHESTER

## Office of the City Clerk



5

Leo R. Bernier  
City Clerk

Carol A. Johnson  
Deputy City Clerk

Paula L-Kang  
Deputy Clerk  
Administrative Services

Matthew Normand  
Deputy Clerk  
Licensing & Facilities

Patricia Piecuch  
Deputy Clerk  
Financial Administration

### MEMORANDUM

To: Thomas R. Clark, City Solicitor  
Kevin A. Clougherty, Finance Officer  
Frank C. Thomas, PE, Public Works Director

From: Carol A. Johnson  
Deputy City Clerk

Date: October 7, 2005

Re: Solid Waste Compliance Officer

On October 4, 2005, the Board of Mayor and Aldermen voted to accept a report of the Committee on Human Resources/Insurance as referenced above. Please note that the issue of enforcement authority for this position was referred to the Solicitor's office and City staff.

Enclosed for your records is a copy of the report reflecting actions taken.

Enclosure

5  
**LeBlond-Kang, Paula**

---

**To:** Clark, Thomas; Clougherty, Kevin; Thomas, Frank

**Subject:** Solid Waste Compliance Officer

On October 4, 2005, the BMA voted to accept a report of the Committee on Human Resources/Insurance as referenced above. Copies were forwarded to your attention on or about October 7th. Please note that the Committee on Bills on Second Reading will be meeting on November 22nd at which time this item will be addressed.

Paula LeBlond-Kang  
Deputy Clerk  
Office of the City Clerk  
One City Hall Plaza  
Manchester, NH 03101  
(603) 624-6480 (work)  
(603) 624-6481 (fax)

11/15/2005



**City of Manchester  
Department of Highways**

227 Maple Street  
Manchester, New Hampshire 03103-5596  
(603) 624-6444 Fax # (603) 624-6487

**Commission**

Edward J. Beleski  
Chairman  
Henry R. Bourgeois  
William F. Kelley  
Michael W. Lowry  
William A. Varkas

Frank C. Thomas, P.E.  
Public Works Director

Kevin A. Sheppard, P.E.  
Deputy Public Works Director

November 21, 2005  
#05-102

Committee on Bills of Second Reading of the  
Honorable Board of Mayor and Aldermen  
CITY OF MANCHESTER  
One City Hall Plaza,  
Manchester, New Hampshire 03101

**Attn:** Leo R. Bernier, City Clerk

**Re:** *Solid Waste Compliance Officer*

Dear Aldermen:

The Highway Department was instructed to work with the Solicitor's Office to define needed enforcement powers for this Solid Waste Compliance Officer and to prepare needed documentation to achieve this enforcement power. These tasks have not been completed due to the fact that there are no funds allocated for this position. At the Human Resources Committee, it was noted we would revisit the funding issue after the winter season to see if there would be any surplus operating funds in our budget that could be used for this position.

Therefore, it is recommended that this issue be tabled until late winter.

Very truly yours,

Frank C. Thomas, P.E.  
Public Works Director

/c

cc: Thomas Clark, City Solicitor  
Kevin A. Sheppard, Deputy PWD

b

- SUBSTITUTE -

To the Board of Mayor and Aldermen of the City of Manchester:

The Committee on Bills on Second Reading respectfully recommends, after due and careful consideration, that an Ordinance:

“Amending the Code of Ordinances of the City of Manchester by adding a new Chapter 54: Storm Water to Title V: Public Works.”



be referred to a public hearing to be held on Monday, September 26 at 5:30 PM in the Aldermanic Chambers.

(Unanimous vote)

At a meeting of the Board of Mayor and Aldermen  
held Sept 6, 2005 on a motion of Ald. O'Neil  
seconded by Ald. Smith the report  
of the Committee was accepted and its recommendations  
(~~adopted~~) (~~denied~~)

\_\_\_\_\_  
City Clerk

Respectfully submitted,

  
Clerk of Committee  




**City Of Manchester  
Department of Highways  
Environmental Protection Division**

300 Winston Street  
Manchester, New Hampshire 03103-6826  
(603) 624-6595 Fax (603) 628-6234

Frank C. Thomas, P.E.  
Public Works Director

Kevin A. Sheppard, P.E.  
Deputy Public Works Director

**IN BOARD OF MAYOR & ALDERMEN**

**DATE:** July 19, 2005

**ON MOTION OF ALD.** O'Neil

**SECONDED BY ALD.** Garrity

#05-012-EPC

refer to the Committee on

**VOTED TO** Bills on Second Reading.

*L. Bernier*  
**CITY CLERK**

June 29, 2005

Leo Bernier  
City Clerk  
1 City Hall Plaza  
Manchester, NH 03101

Re: Storm Water Ordinance Passage

Dear Leo:

The Department of Highways has finalized the Storm Water Ordinance and Rules & Regulations as required by the EPA's, Storm Water Management Plan. These documents have had all the required internal reviews and comments. They are now ready for the Ordinance adoption process. Could you please put this Ordinance on the agenda for the next Board of Mayor and Aldermen meeting? Representatives from Highway Department will be available to answer any questions.

There will need to be at least one public hearing during the approval process as this is a requirement of the EPA. A copy of the draft Ordinance and Rules & Regulations are attached for duplication and distribution.

The actions taken to date by the Highway Department are presented below:

- March 10, 2003 the EPA implemented the Storm Water Management Program (SWMP). Forty-five communities in NH were required to implement the program.
- The Program requires six-minimum controls (1. Education & Outreach, 2. Public Participation, 3. Illicit Discharges, 4. Runoff Controls, 5. Post-construction storm water management, 6. Pollution Prevention in Municipal Operations). Each minimum control has associated tasks;
- Control three (Illicit Discharges), task number one (Develop a Storm Water Ordinance), requires the development and adoption of a Storm Water Ordinance. The required implementation date is 7/30/05 (this is for finalization of a draft for presentation to the Board of Mayor & Aldermen);

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Storm Water Ordinance Passage

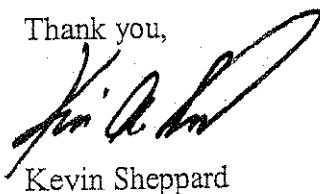
Page 2

June 29, 2005

- There was an initial meeting with the Planning Department in the fall of 2003 (Terry Harlacher & Louise Donnington) to explain storm water requirements and receive planning's input and perspective on the Ordinance development. This was followed by a meeting with the Planning Board with a slide presentation of the EPA requirements;
- The Highway Department staff and EPD had four internal meetings to work on the draft ordinance. The consensus was to have a small Ordinance that referenced an extensive set of Rules & Regulations. This route was chosen as it will be easier to update Rules & Regulations as the program matures and Federal regulations change;
- The City Solicitor has reviewed the Ordinance and Rules & Regulations, given his recommendations and these were incorporated into both documents;
- All finalized changes were emailed to the Building, Planning, Health, Highway, Parks & Rec and the Urban Ponds representative to make final comment;
- Final passage date of an Ordinance is required by 7/30/06, otherwise EPA may take enforcement action against the City for failure to comply with the approved Storm Water Management Program;
- A meeting and overview of the documents was done with the Highway Commission on June 13, 2005 to explain the requirements behind the Ordinance and Rules & Regulations.

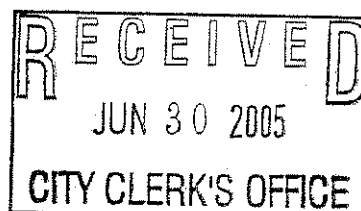
Rick Cantu, of EPD, is the Storm Water Coordinator and is coordinating the efforts to finalize the adoption of this Ordinance and the Rules and Regulations. Please advise him of the meetings that will need to be attended and what you would like him to include in the presentations.

Thank you,



Kevin Sheppard

Cc: Thomas W. Seigle  
Rick Cantu



# City of Manchester New Hampshire

*In the year Two Thousand and Five*

## AN ORDINANCE

"Amending the Code of Ordinances of the City of Manchester by adding a new Chapter 54: Storm Water to Title V: Public Works."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

### CHAPTER 54: STORM WATER

#### Section

- 54.01 Purpose
- 54.02 Definitions
- 54.03 Administration
- 54.04 Prohibited discharges
- 54.05 Permit procedures and requirements
- 54.06 General Permit Provisions
- 54.07 Eligibility
- 54.08 Waivers
- 54.09 Storm water design and management standards
- 54.10 Industrial activity discharges
- 54.11 Access and inspection of properties and facilities
- 54.12 Notification of accidental discharges and spills
- 54.13 Violations, enforcement and penalties

#### § 54.01 PURPOSE.

The purpose of this chapter is to:

(A) Protect, maintain, and enhance the environment of the City of Manchester, New Hampshire and the public health, safety and the general welfare of the citizens of the City, by controlling discharges of pollutants to the City's storm water system and to maintain and improve the quality of the receiving waters into which the storm water outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the City.

(B) Enable the City of Manchester to comply with the National Pollution Discharge Elimination System permit (NPDES) and applicable regulations, 40 CFR §122.26 for storm water discharges.

(C) Allow the City of Manchester to exercise the powers granted by the State of New Hampshire through ordinance or resolution to:

(1) Exercise general regulation over the planning, location, construction, and operation and maintenance of storm water facilities in the City, whether or not owned and operated by the City;

6

# City of Manchester New Hampshire

*In the year Two Thousand and Five*

## AN ORDINANCE

"Amending the Code of Ordinances of the City of Manchester by adding a new Chapter 54: Storm Water to Title V: Public Works."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

- (2) Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, including the adoption of a system of fees for services and permits;
- (3) Establish standards to regulate the quantity of storm water discharged and to regulate storm water contaminants as may be necessary to protect water quality;
- (4) Review and approve plans for storm water management in proposed subdivisions or commercial developments;
- (5) Issue permits for storm water discharges, or for the construction, alteration, extension, or repair of storm water facilities;
- (6) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit;
- (7) Regulate and prohibit discharges into storm water facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and
- (8) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of storm water contamination, whether public or private.

### §54.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BEST MANAGEMENT PRACTICES.** Physical, structural, and/or managerial practices that, when used individually or in combination, prevent or reduce pollution of water, that have been approved by the City of Manchester, and that have been incorporated by reference into the Storm Water Rules & Regulations as if fully set out within Section 6: Storm Water System Design and Management Standards of the Storm Water Rules & Regulations.

**COMBINED SEWER DRAINAGE SYSTEM.** A single pipe conveyance system intended to receive both sewage and storm or surface water.

**CONTAMINANT.** Any physical, chemical, biological, or radiological substance or matter in water.

# City of Manchester New Hampshire

*In the year Two Thousand and Five*

## AN ORDINANCE

"Amending the Code of Ordinances of the City of Manchester by adding a new Chapter 54: Storm Water to Title V: Public Works."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

**DEPARTMENT OF HIGHWAYS.** The Highway Division of the City of Manchester and associated departments including, but not limited to, the Environmental Protection Division (EPD).

**DIRECTOR OF PUBLIC WORKS.** The Chief Administrator of the Department of Public Works who is authorized to assign Public Works staff to oversee the implementation of the Storm Water Rules & Regulations and the City of Manchester's Storm Water Ordinance.

**DISCHARGE.** Dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked or placed by any means including any direct or indirect entry of any solid or liquid matter into the Municipal Separate Storm Sewer System.

**ILLICIT CONNECTIONS.** Illegal and/or unauthorized connections to the municipal separate storm water system whether or not such connections result in discharges into that system. "Illegal Connection" means either of the following:

(1) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or

(2) Any pipe, open channel, drain or conveyance connected to the municipal separate storm sewer system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

**ILLICIT DISCHARGE.** Any discharge to the Municipal Separate Storm Sewer System that is not composed entirely of storm water and not specifically exempted under Section 2(J) of the Storm Water Rules & Regulations.

**LAND DISTURBING ACTIVITY.** Any activity on property that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, clearing, grading, filling and excavation.

6

# City of Manchester New Hampshire

*In the year Two Thousand and Five*

## AN ORDINANCE

"Amending the Code of Ordinances of the City of Manchester by adding a new Chapter 54: Storm Water to Title V: Public Works."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

**MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4).** The conveyances owned or operated by the municipality for the collection and transportation of storm water, including the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT.** A permit issued pursuant to 33 USC Section 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

**PERSON.** Any and all persons, including any individual, firm or association and any city or private corporation organized or existing under the laws of this or any other state or country.

**POLLUTANT.** Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; sediment; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.

**POLLUTION.** The contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

**PREMISES.** Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

**STATE WATERS.** Any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State of New Hampshire which are not entirely confined and retained completely upon the property of a single person.

# City of Manchester New Hampshire

*In the year Two Thousand and Five*

## AN ORDINANCE

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BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

**STORM WATER.** Storm water runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration and drainage.

**STORM WATER APPEALS COMMITTEE.** A three-member committee consisting of a Highway Commissioner, an engineer from a private engineering firm and an engineer from the Department of Highways.

**STORM WATER MANAGEMENT.** The programs to maintain quality and quantity of storm water runoff to pre-development levels.

**STORM WATER MANAGEMENT FACILITIES.** The drainage structures, conduits, ditches, combined sewers, sewers, and all device appurtenances by means of which storm water is collected, transported, pumped, treated or disposed of.

**STORM WATER MANAGEMENT PLAN.** The set of drawings and other documents that comprise all the information and specifications for the programs, drainage systems, structures, Best Management Practices, concepts and techniques intended to maintain or restore quality and quantity of storm water runoff to pre-development levels.

**STORM WATER POLLUTION PREVENTION PLAN (SWPPP).** A plan that clearly describes appropriate control measures that include a description of all pollution control measures (i.e., Best Management Practices) that will be implemented as part of the construction activity to control pollutants in storm water discharges and describes the interim and permanent stabilization practices for the site.

**STORM WATER RULES & REGULATIONS.** A supplement to the Storm Water Ordinance that includes additional conditions and requirements. Copies are available at the Department of Highways and the Office of the City Clerk.

**STORM WATER RUNOFF.** Flow on the surface of the ground, resulting from precipitation and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

**STORM WATER UTILITY.** The Department of Highways and its duly authorized agents created by ordinance of the City to administer the Storm Water Management Ordinance, and other Storm Water Rules and Regulations adopted by the City.

**STRUCTURAL BEST MANAGEMENT PRACTICES.** Devices that are constructed to provide control of storm water runoff.

6

# City of Manchester New Hampshire

*In the year Two Thousand and Five*

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**STRUCTURAL STORM WATER CONTROL.** A structural storm water management facility or device that controls storm water runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

### § 54.03 ADMINISTRATION.

The Director of the Department of Highways or his designee shall administer the provisions of this ordinance and is hereby authorized to promulgate and amend such rules and regulations as may be necessary and convenient to effectuate the purposes and requirements of this ordinance.

### § 54.04 PROHIBITED DISCHARGES.

The specific prohibited discharges outlined in the Storm Water Rules & Regulations are not inclusive of all discharges prohibited by this ordinance and the Storm Water Rules & Regulations.

### § 54.05 PERMIT PROCEDURES AND REQUIREMENTS.

(A) *Permit Required* - No land owner or land operator shall begin any site work on any building(s), grading or other land development or any land disturbance activities as outlined in Section 3: of the Storm Water Rules & Regulations) without first submitting a Notice of Intent to EPA Region I. Owner must also have received acknowledgement, have an approved Storm Water Pollution Prevention Plan and meet the requirements of this ordinance.

(B) *General Waiver Requirement*. - Every applicant shall provide for storm water management as required by this ordinance and the Department of Highways Storm Water Rules & Regulations unless a written request is filed to waive this requirement. Requests to waive the Storm Water Management Plan requirements shall be submitted to the Department of Highways for approval.

# City of Manchester New Hampshire

*In the year Two Thousand and Five*

## AN ORDINANCE

"Amending the Code of Ordinances of the City of Manchester by adding a new Chapter 54: Storm Water to Title V: Public Works."

BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester, as follows:

(C) *Application Requirements* - Unless specifically excluded by this ordinance, any landowner or operator desiring a permit for a land disturbance activity (as described in Section 4 of the Storm Water Rules & Regulations) shall secure required approvals through the City of Manchester's Planning Board and shall submit to the Department of Highways a copy of the Notice of Intent and approved Storm Water Pollution Prevention Plan for related project before beginning any site clearing or construction.

Unless otherwise excepted by this ordinance, a permit application must be accompanied by required information as outlined in the Storm Water Rules & Regulations in order that the permit application be considered.

The Storm Water Management Plan shall be prepared to meet the requirements of the City of Manchester's Storm Water Rules & Regulations and any required maintenance agreement shall be prepared to meet those requirements. Any and all fees shall be those established by the Department of Highways.

(D) *Application Review Fees* - The fee for review of any land development application shall be set by the Director of Public Works and set forth in the Storm Water Rules & Regulations. Fee shall be made prior to the issuance of any building permit for the development.

### § 54.06 GENERAL PERMIT PROVISIONS.

(A) *Land Disturbance permits when required* - Every owner/operator will be required to obtain an EPA General Permit from the EPA through a Notice of Intent in the following cases:

- (1) Land disturbing activity disturbs one (1) or more acres of land;
- (2) Land disturbing activity of less than one (1) acre of land if such activity is part of a larger common plan of development that affects one (1) or more acres of land;
- (3) Land disturbing activity of less than one (1) acre of land, if in the discretion of City of Manchester such activity poses a unique threat to water, or public health or safety;
- (4) The creation and use of borrow pits (the excavation of soils from one area to be used in another area that would meet any of the criteria of 1, 2, or 3 above).

6

# City of Manchester New Hampshire

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### **§ 54.07 ELIGIBILITY.**

(A) *Permit Eligibility* - Permit eligibility is limited to discharges from "large" and "small" construction activity or as otherwise designated by the EPA. This general permit contains eligibility restrictions, as well as permit conditions and requirements. Permittee may have to take certain actions to be eligible for coverage under this permit. In such cases, permittee must continue to satisfy those eligibility provisions to maintain permit authorization. If permittee does not meet the requirements that are pre-condition to eligibility, then the resulting discharges constitute unpermitted discharges. By contrast, if permittee does not comply with the requirements of the general permit, permittee may be in violation of the general permit for their otherwise eligible discharges.

(B) Combined Sewer Drainage Systems Discharges from "large" and "small" construction activity or as otherwise designated by the EPA that flow into a combined sewer system are not covered by the EPA's Phase II Storm Water Program. A Notice of Intent does not need to be submitted to the EPA nor does the owner/operator have to receive acknowledgement from the EPA prior to the start of construction activity.

The City of Manchester is requiring in these instances that all other conditions as outlined in this ordinance or the Storm Water Rules and Regulations shall apply to all construction activity as defined in Section 4 of the Storm Water Rules & Regulations, with the exception of submitting the Notice of Intent to EPA Region I. The requirements for determination of no impact status as outlined in the Endangered Species Act and Historic Preservation Act along with the completion of a Storm Water Pollution Prevention Plan as outlined in the Notice of Intent submission is still a mandatory submission to the City of Manchester and must follow the conditions as outlined in the EPA's Notice of Intent.

### **§ 54.08 WAIVERS.**

Every applicant shall provide for Storm Water Management as required by the Storm Water Rules & Regulations, unless a written request is filed to waive this requirement. Requests to waive the Storm Water Management Program requirements shall be submitted to the Director of Public Works for approval.

### **§ 54.09 STORM WATER SYSTEM DESIGN AND MANAGEMENT STANDARDS.**

The City adopts as its storm water design and Best Management Practices manual those publications referenced in Section 6: Storm Water System Design and Management Standards of the Storm Water Rules & Regulations

6

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### **§ 54.10 INDUSTRIAL ACTIVITY DISCHARGES.**

All operators of City landfills, hazardous waste treatment, disposal, and recovery facilities and industrial facilities are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, USC § 11023, and industrial facilities that the City determines are contributing a pollutant load to the Municipal Separate Storm Sewer System, which are sources of storm water discharges associated with industrial activity shall comply with the requirements outlined in the City's Storm Water Rules & Regulations.

### **§ 54.11 ACCESS AND INSPECTION OF PROPERTIES AND FACILITIES.**

(A) The representative of the Department of Highways shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this ordinance.

(B) If a property or facility has security measures in force, which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the Department of Highways.

(C) The owner or operator shall allow the representative of the Department of Highways ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of a National Pollutant Discharge Elimination System Permit to discharge storm water.

(D) The Department of Highways shall have the right to set up on any property or facility such devices as are necessary in the opinion of the Department of Highways to conduct monitoring and/or sampling of flow discharges.

(E) The Department of Highways may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the Department of Highways. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.

6

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as follows:

(F) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the Department of Highways and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.

### § 54.12 NOTIFICATION OF ACCIDENTAL DISCHARGES AND SPILLS.

Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-storm water discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into storm water, the City of Manchester's separate storm sewer system, State Waters, or Waters of the U.S., said person shall immediately notify the Department of Highways and take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.

### § 54.13 VIOLATIONS, ENFORCEMENT AND PENALTIES.

(A) Unreasonable delays in allowing the Department of Highways access to a facility shall be a violation of this ordinance.

(B) If the Department of Highways has been refused access to any part of the premises from which storm water is discharged, and the Department of Highways is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the Department of Highways may seek issuance of a search warrant from any court of competent jurisdiction.

(C) It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of the City's Storm Water Ordinance or the Storm Water Rules & Regulations. Any person who has violated or continues to violate these provisions may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the Department of Highways is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The Department of Highways is authorized to seek costs of the abatement (as outlined in Section 10(E) of the Storm Water Rules & Regulations).

6

# City of Manchester New Hampshire

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BE IT ORDAINED, By the Board of Mayor and Aldermen of the City of Manchester,  
as follows:

(D) Whenever the Department of Highways finds that a violation of this ordinance or the Rules and Regulations has occurred, the Public Works Director or designee may order compliance by written Notice of Violation. The Notice of Violation shall contain:

- (1) The name and address of the alleged violator;
- (2) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;
- (5) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed; and,
- (6) A statement that the determination of violation may be appealed to the Department of Highways Storm Water Appeals Committee by filing a written notice of appeal within five (5) days of service of notice of violation.

(E) Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit discharges and illegal connections;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (5) Payment of costs to cover administrative and abatement costs; and,
- (6) The implementation of pollution prevention practices.

6

# City of Manchester New Hampshire

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as follows:

(F) *Appeal of Notice of Violation* - Any person receiving a Notice of Violation may appeal the determination of the Department of Highways. The appeal must be received within five (5) days from the date of the Notice of Violation. Filing of an appeal does not relieve the owner from full compliance with the remedial actions outlined in the Notice of Violation. Hearing on the appeal before the Department of Highways, Storm Water Appeals Committee shall take place within thirty (30) days from the date of receipt of the appeal. The decision of the Storm Water Appeals Committee shall be final.

(G) *Enforcement Measures After Appeal* - If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, then representatives of the Department of Highways may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

(H) *Costs of Abatement of the Violation* - Within ten (10) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the assessment or to the amount of the assessment within fifteen (15) days of such notice. If the amount due is not paid within thirty (30) days after receipt of the notice, or if an appeal is taken, within five (5) days after a decision on said appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the City of Manchester by reason of such violation.

(I) *Civil Penalties* - In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within two (2) days, or such greater period as the Department of Highways shall deem appropriate, after the Director of Public Works or designee has taken one or more of the actions described above, the Public Works Director may impose a penalty not to exceed \$10,000 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

City of Manchester  
New Hampshire

In the year Two Thousand and Five

AN ORDINANCE

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as follows:

(J) *Criminal Penalties* - For violations of this ordinance or the Storm Water Rules & Regulations, the Director of Public Works may issue a citation to the alleged violator requiring such person to appear in court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000 for each day the violation has occurred, or imprisonment for up to sixty (60) days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

(K) *Remedies Not Exclusive* - The remedies listed in this ordinance and the Storm Water Rules & Regulations are not exclusive of any other remedies available under any applicable Federal, State or local law and the City of Manchester may seek cumulative remedies including but not limited to the recovery of attorney's fees, court costs, sampling and monitoring expenses and other expenses associated with enforcement of this ordinance.

6

## **Storm Water Rules & Regulations**

**Note:** These Rules & Regulations are prepared as a direct supplement to the City of Manchester's Storm Water Ordinance, Title V, Chapter 54: Storm Water. These Rules & Regulations will incorporate language directly from that Ordinance along with additional conditions and requirements as provided by that Ordinance.

### **SECTION 1. GENERAL PROVISIONS**

#### **Purpose.**

It is the purpose of these Rules & Regulations to:

- (A) Protect, maintain, and enhance the environment of the City of Manchester, New Hampshire and the public health, safety and the general welfare of the citizens of the City, by controlling discharges of pollutants to the City's storm water system and to maintain and improve the quality of the receiving waters into which the storm water outfalls flow, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the City.
- (B) Enable the City of Manchester to comply with the National Pollution Discharge Elimination System Permit (NPDES) and applicable regulations, 40 CFR §122.26 for storm water discharges.
- (C) Allow the City of Manchester to exercise the powers granted by the State of New Hampshire through ordinance or resolution to:
  - (1) Exercise general regulation over the planning, location, construction, and operation and maintenance of storm water facilities in the City, whether or not owned and operated by the City;
  - (2) Adopt any rules and regulations deemed necessary to accomplish the purposes of this statute, including the adoption of a system of fees for services and permits;
  - (3) Establish standards to regulate the quantity of storm water discharged and to regulate storm water contaminants as may be necessary to protect water quality;
  - (4) Review and approve plans for storm water management in proposed subdivisions or commercial developments;
  - (5) Issue permits for storm water discharges, or for the construction, alteration, extension, or repair of storm water facilities;
  - (6) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit;
  - (7) Regulate and prohibit discharges into storm water facilities of sanitary, industrial, or commercial sewage or waters that have otherwise been contaminated; and
  - (8) Expend funds to remediate or mitigate the detrimental effects of contaminated land or other sources of storm water contamination, whether public or private.

6

#### Administration.

The Director of the Department of Highways or his designee shall administer the provisions of these Rules & Regulations and is hereby authorized to promulgate and amend such rules and regulations as may be necessary and convenient to effectuate the purposes and requirements of these Rules & Regulations.

#### Interpretations of Provisions.

The provisions of these Rules & Regulations with respect to the meaning of the technical terms and phrases, the regulations with respect to erosion and sediment control, and other technical matters shall be interpreted and administered by the Public Works Director acting in and for the City, through its Highway Commission.

#### Definitions.

For the purpose of these Rules & Regulations, the following definitions shall apply: Words used in the singular shall include the plural, and the plural shall include the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined in this section shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

- (1) "*Accidental Discharge*" means a discharge prohibited by these Rules & Regulations, which occurs by chance, and without planning or thought prior to occurrence.
- (2) "*As-built Plans*" means drawings depicting conditions as they were actually constructed.
- (3) "*Best Management Practices*" or BMPs are physical, structural, and/or managerial practices that, when used singly or in combination, prevent or reduce pollution of water, that have been approved by the City of Manchester, and that have been incorporated by reference into these Rules & Regulations as if fully set out therein.  
[NOTE: See Section 6A(1-4) for recommended BMP manuals.]
- (4) "*Channel*" means a natural or artificial watercourse with a definite bed and banks that conducts flowing water continuously or periodically.
- (5) "*Clean Water Act*" means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- (6) "*Combined Sewer Drainage System*" means a single pipe conveyance system intended to receive both sewage and storm or surface water.
- (7) "*Community Water*" means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wetlands, wells and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the City of Manchester.
- (8) "*Construction Activity*" means activities subject to the EPA Phase II Storm Water Program and the NPDES General Construction Permits. These

6

include construction projects resulting in land disturbance. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

- (9) “*Contaminant*” means any physical, chemical, biological, or radiological substance or matter in water.
- (10) “*Department of Highways*” (DPW) means the Highway Division of the City of Manchester and associated departments including, but not limited to, the Environmental Protection Division (EPD).
- (11) “*Director of Public Works*” is the chief administrator of DPW and is authorized to assign DPW staff to oversee the implementation of these Rules & Regulations and the City of Manchester’s Storm Water Ordinance.
- (12) “*Design Storm Event*” means a hypothetical storm event, of a given frequency interval and duration, used in the analysis and design of a storm water facility.
- (13) “*Discharge*” means dispose, deposit, spill, pour, inject, seep, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, seeped, dumped, leaked, or placed by any means including any direct or indirect entry of any solid or liquid matter into the Municipal Separate Storm Sewer System.
- (14) “*Easement*” means an acquired privilege or right of use or enjoyment that a person, party, firm, corporation, City or other legal entity has in the land of another.
- (15) “*Erosion*” means the removal of soil particles by the action of water, wind, ice or other geological agents, whether naturally occurring or acting in conjunction with or promoted by anthropogenic activities or effects.
- (16) “*Erosion and Sediment Control Plan*” means a written plan (including drawings or other graphic representations) that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.
- (17) “*Hotspot*” (“*Priority Area*”) means an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in storm water.
- (18) “*Illicit Connections*” means illegal and/or unauthorized connections to the Municipal Separate Storm Water System whether or not such connections result in discharges into that system. “*Illegal Connection*” means either of the following:
  - a) Any pipe, open channel, drain or conveyance, whether on the surface or subsurface, which allows an illicit discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system, regardless of whether such pipe, open channel, drain or conveyance has been previously allowed, permitted, or approved by an authorized enforcement agency; or
  - b) Any pipe, open channel, drain or conveyance connected to the Municipal Separate Storm Sewer System which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

- (19) "*Illicit Discharge*" means any discharge to the Municipal Separate Storm Sewer System that is not composed entirely of storm water and not specifically exempted under Section 2(J).
- (20) "*Industrial Activity*" means activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).
- (21) "*Land Disturbing Activity*" means any activity on property that results in a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. Land disturbing activities include, but are not limited to, development, re-development, demolition, construction, reconstruction, clearing, grading, filling, and excavation.
- (22) "*Maintenance*" means any activity that is necessary to keep a storm water facility in good working order so as to function as designed. Maintenance shall include complete reconstruction of a storm water facility if reconstruction is needed in order to restore the facility to its original operational design parameters. Maintenance shall also include the correction of any problem on the site property that may directly impair the functions of the storm water facility.
- (23) "*Maintenance Agreement*" means a document recorded in the land records that acts as a property deed restriction, and which provides for long-term maintenance of storm water management practices.
- (24) "*Municipal Separate Storm Sewer System (MS4)*" means the conveyances owned or operated by the municipality for the collection and transportation of storm water, including the roads and streets and their drainage systems, catch basins, curbs, gutters, ditches, man-made channels, and storm drains.
- (25) "*National Pollutant Discharge Elimination System Permit*" or "*NPDES Permit*" means a permit issued pursuant to 33 USC § 1342(b) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
- (26) "*Non-Storm Water Discharge*" means any discharge to the storm drain system that is not composed entirely of storm water.
- (27) "*Off-site Facility*" means a structural BMP located outside the subject property boundary described in the permit application for land development activity.
- (28) "*On-site Facility*" means a structural BMP located within the subject property boundary described in the permit application for land development activity.
- (29) "*Peak Flow*" means the maximum instantaneous rate of flow of water at a particular point resulting from a storm event.
- (30) "*Person*" means any and all persons, including any individual, firm or association and any city or private corporation organized or existing under the laws of this or any other state or country.
- (31) "*Pollutant*" means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; sediment; floatables; pesticides, herbicides, and fertilizers; liquid and solid

6

wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; concrete and cement; and noxious or offensive matter of any kind.

- (32) *"Pollution"* means the contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.
- (33) *"Premises"* means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- (34) *"Priority Area"* means "hot spot" as defined in Definitions (17).
- (35) *"Runoff"* means that portion of the precipitation on a drainage area that is discharged from the area into the Municipal Separate Storm Water System.
- (36) *"Sediment"* means solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice and has come to rest on the earth's surface either above or below sea level.
- (37) *"Sedimentation"* means soil particles suspended in storm water that can settle in streambeds and disrupt the natural flow of the stream.
- (38) *"Soils Report"* means a study of soils on a subject property with the primary purpose of characterizing and describing the soils. The soils report shall be prepared by a qualified soils engineer, who shall be directly involved in the soil characterization either by performing the investigation or by directly supervising employees.
- (39) *"Stabilization"* means providing adequate measures, vegetative and/or structural, that will prevent erosion from occurring.
- (40) *"State Waters"* means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface and subsurface water, natural or artificial, lying within or forming a part of the boundaries of the State of New Hampshire which are not entirely confined and retained completely upon the property of a single person.
- (41) *"Storm Water"* means storm water runoff, snow melt runoff, surface runoff, street wash waters related to street cleaning or maintenance, infiltration and drainage.
- (42) *"Storm Water Appeals Committee"* will be a three-member committee consisting of a Highway Commissioner, an engineer from a private engineering firm and an engineer from the Department of Highways.
- (43) *"Storm Water Management"* means the programs to maintain quality and quantity of storm water runoff to pre-development levels.
- (44) *"Storm Water Management Facilities"* means the drainage structures, conduits, ditches, combined sewers, sewers, and all device appurtenances by means of which storm water is collected, transported, pumped, treated or disposed of.

- 6
- (45) “*Storm Water Management Plan*” means the set of drawings and other documents that comprise all the information and specifications for the programs, drainage systems, structures, BMPs, concepts and techniques intended to maintain or restore quality and quantity of storm water runoff to pre-development levels.
  - (46) “*Storm Water Pollution Prevention Plan*” (SWPPP) means a plan that clearly describes appropriate control measures that include a description of all pollution control measures (i.e., BMPs) that will be implemented as part of the construction activity to control pollutants in storm water discharges and describes the interim and permanent stabilization practices for the site.
  - (47) “*Storm Water Runoff*” means flow on the surface of the ground, resulting from precipitation and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
  - (48) “*Storm Water Utility*” means the Department of Highways and its duly authorized agents created by ordinance of the City to administer the Storm Water Management Ordinance, and other Storm Water Rules and Regulations adopted by the City.
  - (49) “*Structural BMPs*” means devices that are constructed to provide control of storm water runoff.
  - (50) “*Structural Storm Water Control*” means a structural storm water management facility or device that controls storm water runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.
  - (51) “*Surface Water*” includes waters upon the surface of the earth in bounds created naturally or artificially including, but not limited to, streams, other watercourses, lakes and reservoirs.
  - (52) “*Watercourse*” means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.
  - (53) “*Watershed*” means all the land area that contributes runoff to a particular point along a waterway.

## SECTION 2. PROHIBITED DISCHARGES

The specific prohibited discharges in this section are not inclusive of all discharges prohibited by these Rules & Regulations.

- (A) Violation of Water Quality Standard. No person shall introduce or cause to be introduced into the Municipal Separate Storm Sewer System (MS4) any discharge that causes or contributes to causing the City to violate a water quality standard, the City’s NPDES permit, or any state-issued discharge permit for discharges from its MS4.
- (B) Introduction of Prohibited Substances. No person shall dump, spill, leak, pump, pour, emit, empty discharge, leach, dispose, or otherwise introduce or cause, allow, or permit to be introduced any of the following substances into the MS4.
  - (1) Any new or used motor oil, antifreeze, or other motor vehicle fluid;

- 6
- (2) Any industrial wastes;
  - (3) Any hazardous waste, including hazardous household waste;
  - (4) Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
  - (5) Any garbage, rubbish or yard waste;
  - (6) Any wastewater from a commercial carwash facility; from any vehicle washing, cleaning or maintenance at any new or used automobile, or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning or maintenance of any business or commercial or public service vehicle, including truck, bus, or heavy equipment, by a business or public entity that operates more than two such vehicles;
  - (7) Any wastewater from the washing, cleaning, de-icing, or other maintenance of aircraft;
  - (8) Any wastewater from commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any soap, detergent, degreaser, solvent, or any other harmful cleaning substance;
  - (9) Any wastewater from any floor, rug or carpet cleaning;
  - (10) Any wastewater from the wash down or other cleaning of pavement that contains any harmful quantity of soap, detergent, solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance; or any wastewater from the wash down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed;
  - (11) Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emissions filter, or the blowdown from a boiler;
  - (12) Any ready-mixed concrete, mortar, ceramic, or asphalt base material or hydro mulch material, or from the cleaning of commercial vehicles or equipment containing, or used in transporting or applying, such material;
  - (13) Any runoff or wash down water from any animal pen, kennel, or fowl or livestock containment area;
  - (14) Any filter backwash from a swimming pool, fountain or spa;
  - (15) Any swimming pool water containing any harmful quantity of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in the pool cleaning;
  - (16) Any water from a water curtain in a spray room used for painting vehicles or equipment;
  - (17) Any contaminated runoff from a vehicle wrecking yard;
  - (18) Any substance or material that will damage, block, or clog the MS4;
  - (19) Any release from a petroleum storage tank, or any leachate or runoff from soil contaminated by a leaking petroleum storage tank, or any discharge of pumped, confined, or treated waste water from the remediation of any such petroleum storage tank release, unless it complies with state and federal standards and does not contain any harmful quantity of any pollutant;
  - (20) Any pet waste as outlined in the Manchester Ordinance §90.04

6

- (C) Introduction of Earth-type Materials. No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with cleaning, grading, excavation or other construction activities, (or associated with landfilling or other placement or disposal of soil, rock, or other earth materials) in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable (under the prevailing circumstances).
- (D) Introduction of Sewage and Grey Water. No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4; this includes gray water discharge such as washing machine discharge, sink drains, floor drains, etc. or allow such a connection to continue.
- (E) Service Station Pavement Wash Water. No person shall cause or allow any pavement wash water from a service station to be discharged into the MS4 unless such wash water has passed through a properly functioning and maintained, grease, oil, and sand interceptor before discharge into the MS4.
- (F) Pesticide and Herbicide Use. No person shall use or cause to be used any pesticide or herbicide contrary to any directions for use on any labeling required by state or federal statute or regulation. Any use of any pesticide, herbicide, or fertilizer in any manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States.
- (G) Disposal of Pesticide and Herbicide. No person shall dispose of, discard, store, or transport a pesticide, herbicide, or fertilizer, or a pesticide, herbicide, or a fertilizer container, in a manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide, herbicide, or fertilizer to enter the MS4 or waters of the United States.
- (H) Storage of Trash, Toxic Substances and Hazardous Wastes. No person shall allow trash and debris to stand on property or collect on property and prohibit the storage of toxic or hazardous substances on property so as to allow exposure to precipitation and storm water runoff, which can affect storm water discharge to the MS4 or adjacent water table.
- (I) Litter of Urban Ponds, Lakes, Streams or River Banks. Any residential, commercial or industrial property boundary, located within 150 feet of any pond, lake, stream or river bank, shall assure that trash, debris, materials, containers, grass clippings, leaf and yard waste, wood chips, material used for cover or any such other material, does not litter this buffer area by means natural (wind or storm movement of material), by the careless discard of such material, or by any other means that displaces these objects from the owner's property boundary to anywhere within this 150 foot buffer zone area. All such violations will be addressed first through written notification with a time frame for clean

6

up. If the clean up is not completed in the time frame stated, then the City will continue escalated enforcement as outlined in the penalty section of these Rules & Regulations.

- (J) Allowable Discharges. Notwithstanding any provisions to the contrary, the following types of discharges into the storm drain system are exempt from the prohibitions set herein:

- (1) Watering of lawns, landscaping and gardens;
- (2) Washing of personal motor vehicles by residents;
- (3) Draining of water from swimming pools or spas, after chlorine content of such water according to a test kit, shows a zero reading of chlorine;
- (4) Flushing of water lines or other discharges from potable water sources;
- (5) Flows from fire fighting activities;
- (6) Managed minimal amounts of air conditioning condensation;
- (7) Uncontaminated pumped groundwater;
- (8) Discharges from rising ground waters, springs, and flows from riparian habitats and wetlands.

### **SECTION 3. PERMIT PROCEDURES AND REQUIREMENTS**

- (A) Permit Required. No land owner or land operator shall begin any site work on any building(s), grading or other land development or any land disturbance activities without first submitting a Notice of Intent (NOI) to EPA Region I. Owner must also have received an acknowledgement, have an approved Storm Water Pollution Prevention Plan (SWPPP) and meet the requirements of the Storm Water Ordinance and these Rules & Regulations.
- (B) Application Requirements. Unless specifically excluded by the ordinance and these Rules & Regulations, any landowner or operator desiring a permit for a land disturbance activity (as described in Section 4(A)) shall secure required approvals through the City of Manchester's Planning Department/Board and shall submit to the Department of Highways a copy of the NOI and approved SWPPP for related project before beginning any site clearing or construction.

Unless otherwise excepted by these Rules & Regulations, a permit application must be accompanied by the following in order that the permit application be considered: a storm water management concept plan; a maintenance agreement; and a non-refundable permit review fee.

The Storm Water Management Plan shall be prepared to meet the requirements of Section 4B(2b) of these Rules & Regulations. The maintenance agreement may be prepared to meet the requirements of these Rules & Regulations and fees may be those established by the Department of Highways.

- 6
- (C) The Department of Highways May Establish Application Review Fees. The fee for review of any land development application shall be established by the Director of Public Works and must be paid before site construction begins. Any fee schedule is included as an appendix to these Rules & Regulations.
- (D) Application Procedure. The following application procedure will apply for any construction project, whether a new development or redevelopment as outlined within these Rules & Regulations:
- (1) Applications for land disturbance activity permits must be filed with the City of Manchester's Planning Department on any regular business day.
  - (2) A copy of this permit application shall be forwarded to the Department of Highways for review.
  - (3) Permit applications shall include the following before all final approvals are given by the City of Manchester: two copies of the Storm Water Pollution Prevention Plan, two copies of the maintenance agreement, and any required review fees.
  - (4) Within thirty (30) business days of the receipt of a complete permit application, including all documents as required by these Rules & Regulations, Manchester's Planning Department shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved.
  - (5) If the permit application, Storm Water Pollution Prevention Plan or maintenance agreement are disapproved, the applicant may revise the Storm Water Pollution Prevention Plan or agreement. If additional information is submitted, the Planning Board and Department of Highways shall have thirty (30) business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.
  - (6) If the permit application, final Storm Water Pollution Prevention Plan and maintenance agreement are approved by the Planning Department/Board and Department of Highways, all appropriate land disturbance activity permits shall be issued.
- (E) Permit Duration. Permits issued under this section shall be valid from the date of issuance through the date as outlined in Section 4(E) .

#### **SECTION 4. GENERAL PERMIT PROVISIONS**

- (A) Land Disturbance Permits.  
When required, every owner/operator will be required to obtain an EPA General Permit from the EPA through a Notice of Intent (NOI) in the following cases:
- (1) Land disturbing activity disturbs one (1) or more acres of land;
  - (2) Land disturbing activity of less than one (1) acre of land if such activity is part of a larger common plan of development that affects one (1) or more acres of land;
  - (3) Land disturbing activity of less than one (1) acre of land, if in the discretion of City of Manchester such activity poses a unique threat to water, or public health or safety;

- 6
- (4) The creation and use of borrow pits (the excavation of soils from one area to be used in another area that meets any of the criteria of 1, 2, and 3 above).

(B) Application for a Land Disturbance Permit.

- (1) Each application shall include the following:
- (a) Name of applicant;
  - (b) Business or residence address of applicant;
  - (c) Name, address and telephone number of the owner of the property of record in the office of the assessor of property;
  - (d) Address and legal description of subject property including the tax reference number and parcel number of the subject property;
  - (e) Name, address and telephone number of the contractor and any subcontractor(s) who shall perform the land disturbing activity and who shall implement the erosion and sediment control plan and SWPPP;
  - (f) A statement indicating the nature, extent and purpose of the land disturbing activity including the size of the area for which the permit shall be applicable and a schedule for the starting and completion dates of the land disturbing activity.
  - (g) The applicant shall obtain from any other state or federal agency any other appropriate environmental permits that pertain to the property. However, the inclusion of those permits in the application shall not foreclose the City of Manchester from imposing additional development requirements and conditions, commensurate with this ordinance, on the development of property covered by those permits.
- (2) Each application shall be accompanied by:
- (a) A sediment and erosion control plan.
  - (b) A Storm Water Pollution Prevention Plan (SWPPP) providing for storm water management during the land disturbing activity and after the activity has been completed. The SWPPP shall be prepared, signed, and sealed by a Registered Professional Engineer (the signature and seal of the Registered Professional Engineer shall constitute his/her attestation that the SWPPP fully complies with the requirements of the Construction General Permit, or with any applicable individual or group NPDES permit issued for storm water discharges from the construction site, and with any additional requirement imposed by these Rules & Regulations) and shall provide the following Best Management Practices (BMP) measures:
  - (c) Ensure existing vegetation is preserved where feasible;

6

- (d) Disturbed portions of the site are stabilized as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased;
- (e) In no case shall a construction site have more than 5 acres of unstabilized area at one time;
- (f) Use of structural practices to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants for the site to the extent feasible;
- (g) Minimize the tracking of sediments off-site by vehicles;
- (h) Minimize the generation of dust or other windblown waste from the site;
- (i) Prevent the discharge of building materials to include cement, lime, concrete, and mortar to the MS4 or waters of the United States;
- (j) Provide general good housekeeping measures to prevent and contain spills and assure the proper cleanup and disposal of any such spills in compliance with state, federal and local requirements;
- (k) Implementation of proper waste disposal and waste management techniques, including covering waste materials and minimizing ground contact with hazardous chemicals and trash;
- (l) Timely maintenance of vegetation, erosion and sediment control measures and other BMPs in good and effective operating condition;
- (m) Installation of structural measures during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed.

- (C) Storm Water Pollution Prevention Plan (SWPPP). The SWPPP shall be updated and modified as appropriate and as required by the Construction General Permit and these Rules & Regulations. Any update or modification to the SWPPP shall be prepared, signed, and sealed by a Registered Professional Engineer.

All contractors and subcontractors identified in a SWPPP shall sign a copy of the following certification statement before conducting any professional service identified in the SWPPP.

"I certify under penalty of law that I understand the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification, with the Storm Water Ordinance of the City of Manchester, New Hampshire, and with those provisions of the Storm Water Pollution Prevention Plan (SWPPP) for the construction site for which I am responsible."

6

This certification must include the name and title of the person providing the signature; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made. The SWPPP with Engineers seal and signature and the certifications of contractors and subcontractors shall be retained at the construction site from the date of commencement of construction through the date of final stabilization. A copy must also be made available to the City of Manchester's Department of Highways.

Each application for a land disturbance permit shall be accompanied by payment of land disturbance permit and other storm water management fees, which shall be set in the Rules & Regulations.

(D) Review and Approval of Application.

- (1) The Planning Department and Department of Highways will review each application for a land disturbance permit to determine its conformance with the provisions of these Rules & Regulations. Within thirty (30) days after receiving an application, the Planning Department shall provide one of the following responses in writing:
  - (a) Approval of the permit application;
  - (b) Approval of the permit application, subject to such reasonable conditions as may be necessary to secure substantially the objectives of this ordinance, and issue the permit subject to these conditions; or
  - (c) Denial of the permit application, indicating the reason(s) for the denial.
- (2) If the Planning Department/Board has granted conditional approval of the permit, the applicant shall submit a revised plan that conforms to the conditions established by the Planning Department/Board. However, the applicant shall be allowed to proceed with his land disturbing activity so long as it conforms to conditions established by the Planning Department/Board.
- (3) No development plans will be released until the land disturbance permit has been approved.

(E) Permit Duration.

Every land disturbance permit shall expire and become null and void if substantial work authorized by such permit has not commenced within one hundred eighty (180) calendar days of issuance, or is not complete within eighteen (18) months from the date of the commencement of construction (unless construction extension is granted by the Planning Board).

- (F) Notice of Construction. The applicant must notify the Department of Highways ten (10) working days in advance of the commencement of construction. The Owner/Operator/Contractor shall conduct regular inspections of the storm water management system construction. Inspections shall be performed on all areas that have

6

not had final stabilization, areas used for storage of materials that are exposed to precipitation, structural control measures, locations where vehicles enter and exit the construction site, open manholes and piping that could collect sediment and other controls as outlined in the SWPPP. All inspections shall take place after any rainstorm that is 0.5 inches of rain or greater and once every seven days. These inspections must be documented and written reports prepared that contain the following information:

- (1) The date and location of the inspection;
  - (2) Whether construction is in compliance with the approved Storm Water Pollution Prevention Plan;
  - (3) Variations from the approved construction specifications;
  - (4) Any violations that exist.
- (G) Joint Responsibility. Any contractor or subcontractor on a site of construction activity, who is not an owner or operator, but who is responsible under his/her contract or subcontract for implementing a best management practices control measure(s), is jointly and severally responsible for any willful or negligent failure on his/her part to adequately implement that control measure (if such failure causes or contributes to causing the City to violate a water quality standard, the City's NPDES permit, or any State-issued discharge permit for discharges from its MS4).
- (H) Final Stabilization. When a site has been finally stabilized and all storm water discharges from construction activities that are authorized by these Rules & Regulations and by the NPDES permit for those construction activities are eliminated, or where the operator of all storm water discharges at a facility changes, the operator of the construction site shall submit to the City's Department of Highways a copy of the NPDES Notice of Termination (NOT) of coverage under a NPDES General Permit for Storm Water Discharges. If the construction activity was performed in a combined sewer area of the City, the Notice of Termination need only be filed with the City of Manchester.

Upon final stabilization of the construction site, the owner (or duly authorized representative thereof) by submission of the NOT written certification to the Director of Public Works is certifying that the site has been finally stabilized. The City may withhold an occupancy or use permit for any premises constructed on the site until such certification of final stabilization has been filed and the Director of Public Works has determined, following any appropriate inspection, that final stabilization has, in fact, occurred and that any required permanent structural controls have been completed.

The operator shall retain copies of any SWPPP, certifications and all reports required by these Rules & Regulations or by the NPDES permit for the site, and records of all data used to complete the NOI, for a period of at least three years from the date that the site is finally stabilized.

The operator shall assure that the City of Manchester's Department of Highways is given two full sets of as-builts of the completed project. These must be received within forty-five (45) days of the submission of the NOT. If these as-builts are not received by the City, then the City may draw funds from any retainage, performance or security bonds to

6  
have an engineer complete the as-builts from the field notes with all costs being borne by the operator.

Within thirty (30) days of the submission of the NOT the operator's construction site must be cleaned and free of any residual stock piles of materials, hay bales, silt fences or any such BMPs that were used for site erosion and sediment controls. If these are not completed the City may draw funds from any retainage, performance, or security bonds to have a contractor complete the clean up and close out any remaining site stabilization.

(I) Performance Bonds.

- (1) The Department of Highways may, at its discretion, require the submittal of a performance security or performance bond prior to issuance of a permit in order to ensure that the storm water practices are installed by the permit holder as required by the approved Storm Water Management Plan. The amount of the installation performance security or performance bond shall be the total estimated construction cost of the structural BMPs approved under the permit plus any reasonably foreseeable additional related costs, e.g., for damages or enforcement. [Or plus a certain percentage of the total estimated costs.] The performance security shall contain forfeiture provisions for failure to complete work specified in the Storm Water Management Plan. The applicant shall provide an itemized construction cost estimate complete with unit prices, which shall be subject to acceptance, amendment or rejection by the Department of Highways. Alternatively the Department of Highways shall have the right to calculate the cost of construction cost estimates.
- (2) The performance security or performance bond shall be released in full only upon submission of as-built plans and written certification by a registered professional engineer licensed to practice in the State of New Hampshire that the structural BMP has been installed in accordance with the approved plan and other applicable provisions of these Rules & Regulations. The Department of Highways will make a final inspection of the structural BMP to ensure that it is in compliance with the approved plan and the provisions of these Rules & Regulations. Provisions for a partial pro-rata release of the performance security or performance bond based on the completion of various development stages can be made at the discretion of the Department of Highways.

## SECTION 5. WAIVERS

- (A) General. Every applicant shall provide for storm water management as required by the ordinance and its Rules & Regulations unless a written request to waive the requirement has been filed with and approved by the Director of Public Works.
- (B) Conditions for Waiver. The minimum requirements for storm water management may be waived in whole or in part upon written request of the applicant, provided that at least one of the following conditions applies:

- 6
- (1) It can be demonstrated that the proposed development is not likely to impair attainment of the objectives of these Rules & Regulations.
  - (2) Alternative minimum requirements for on-site management of storm water discharges have been established in a Storm Water Management Plan that has been approved by the Department of Highways.
  - (3) Provisions are made to manage storm water by an off-site facility. The off-site facility must be in place and designed to provide the level of storm water control that is equal to or greater than that which would be afforded by on-site practices. Further, the facility must be operated and maintained by an entity that is legally obligated to continue the operation and maintenance of the facility.
- (C) Downstream Damage, etc. Prohibited. In order to receive a waiver, the applicant must demonstrate to the satisfaction of the Department of Highways that the waiver will not lead to any of the following conditions downstream:
- (1) Deterioration of existing culverts, bridges, dams, and other structures;
  - (2) Degradation of biological functions or habitat;
  - (3) Accelerated streambank or streambed erosion or siltation;
  - (4) Increased threat of flood damage to public health, life or property.
- (D) Land Disturbance Permit Not to be Issued Where Waiver Requested. No land disturbance permit shall be issued where a waiver has been requested until the waiver is granted. If no waiver is granted, the plans must be resubmitted with a Storm Water Management Plan.

## **SECTION 6. STORM WATER SYSTEM DESIGN AND MANAGEMENT STANDARDS**

### Storm Water Design or Best Management Practices Manual.

- (A) Adoption. The City adopts as its storm water design and Best Management Practices (BMP) manual the following publications, which are incorporated by reference in these Rules & Regulations as is fully set out herein:
- (1) New Hampshire Department of Environmental Services Sediment and Erosion Control Manual, "Green Book" (also known as the Rockingham County "Storm Water Management and Erosion Control Handbook for Urban and Developing Areas");
  - (2) The City of Manchester's "Standard Specifications for Road, Drain & Sewer Construction";
  - (3) "Innovative Stormwater Treatment Technologies" – Best Management Practices Manual NHDES, May 2002; and
  - (4) "New Hampshire DOT Guidelines for Temporary Erosion and Sediment Control and Storm Water Management" - NHDOT Bureau of Construction.

## **SECTION 7. INDUSTRIAL ACTIVITY DISCHARGES**

All operators of City landfills, hazardous waste treatment, disposal, and recovery facilities and industrial facilities are subject to Section 313 of Title III of the Superfund

6

Amendments and Reauthorization Act of 1986 (SARA) 42, USC § 11023; and industrial facilities that the City determines are contributing a pollutant load to the MS4, which are sources of storm water discharges associated with industrial activity shall comply with the following requirements:

- (A) Any operator who intends to obtain coverage for storm water discharge associated with industrial activity under the NPDES General Permit for Storm Water Discharges Associated with Industrial Activity ("the Industrial General Permit") shall submit a signed copy of its NOI to the Director of Public Works at least five (5) days prior to the commencement of the industrial activity at the facility. If industrial activity is already underway upon the effective date of the Storm Water Ordinance, the NOI shall be submitted within thirty (30) days.
- (B) A SWPPP shall be prepared and implemented in accordance with the requirements of the Industrial General Permit or any individual or group NPDES permit issued for storm water discharges from the industrial facility, and with any additional requirement imposed by or under these Rules & Regulations.
- (C) The SWPPP shall be prepared, signed and sealed by a Registered Professional Engineer as outlined in Section 4(B2).
  - (1) Qualified personnel (provided by the operator) shall conduct comprehensive site compliance evaluations as required by Part IV.D.4 of the Industrial General Permit at intervals of no less than once per year. Based on the results of the compliance prevention measures and controls identified in the SWPPP shall be revised as appropriate within two weeks of such evaluation and shall provide for implementation of any changes to the SWPPP in a timely manner, but in no case more than twelve weeks after the compliance evaluation.
  - (2) A report summarizing the scope of the comprehensive site compliance evaluation required by paragraph VI.A.14, personnel making the compliance inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with necessary and appropriate plan revisions shall be made and retained as part of the SWPPP for at least one year after all storm water discharges from the facility are eliminated and the required NOT has been submitted. The report shall identify any incidence of noncompliance; or, if the report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP, the applicable NPDES permit, and these Rules & Regulations. The individual responsible for the comprehensive site compliance evaluation shall sign the report, and it shall be submitted to the City's Director of Public Works within ten days of completion.
  - (3) If the industrial facility is required by Part VI.B.2 of the Industrial General Permit to conduct semi-annual monitoring, a signed copy of each semi-annual monitoring report prepared in accordance with Part VI.D. shall be submitted to the Director of Public Works.
  - (4) By written notice, the Director of Public Works may require any industrial facility identified in accordance with this Section 6 to implement a monitoring program

6

that includes the submission of quantitative data on the following constituents; any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES permit for the facility, oil and grease, COD, pH, BOD5, TSS, Total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under 40 CFR 122.21(g)(7)(iii) and (iv). The Public Works Director may require written reports of any such monitoring to be submitted to him/her.

- (5) No discharge shall exceed the maximum allowable concentrations as outlined in the New Hampshire Env-Ws 1700 Surface Water Quality Regulations.
- (6) Where all storm water discharges associated with industrial activity that are authorized by the Storm Water Ordinance, and by the NPDES permit for those discharges from industrial activities, are eliminated, or where the operator of storm water discharges associated with industrial activity at a facility changes, the operator of the facility shall submit to the Director of Public Works a Notice of Termination that includes the information required for Notices of Termination by Part IX of the Industrial General Permit.

## **SECTION 8. ACCESS AND INSPECTION OF PROPERTIES AND FACILITIES**

- (A) The representative of the Department of Highways shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with these Rules & Regulations.
- (B) If a property or facility has security measures in force, which require proper identification and clearance before entry into its premises, the owner or operator shall make the necessary arrangements to allow access to representatives of the Department of Highways.
- (C) The owner or operator shall allow the representative of the Department of Highways ready access to all parts of the premises for the purposes of inspection, sampling, photography, videotaping, examination and copying of any records that are required under the conditions of an NPDES permit to discharge storm water.
- (D) The Department of Highways shall have the right to set up on any property or facility such devices as are necessary in the opinion of the Department of Highways to conduct monitoring and/or sampling of flow discharges.
- (E) The Department of Highways may require the owner or operator to install monitoring equipment and perform monitoring as necessary, and make the monitoring data available to the Department of Highways. This sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the owner or operator at his/her own expense. All devices used to measure flow and quality shall be calibrated to ensure their accuracy.

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- (F) Any temporary or permanent obstruction to safe and easy access to the property or facility to be inspected and/or sampled shall be promptly removed by the owner or operator at the written or oral request of the Department of Highways and shall not be replaced. The costs of clearing such access shall be borne by the owner or operator.
  - (G) Unreasonable delays in allowing the Department of Highways access to a facility shall constitute a violation of this ordinance.
  - (H) If the Department of Highways has been refused access to any part of the premises from which storm water is discharged, and the Department of Highways is able to demonstrate probable cause to believe that there may be a violation of these Rules & Regulations, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with these Rules & Regulations or any order issued hereunder, or to protect the overall public health, safety, environment and welfare of the community, then the Department of Highways may seek issuance of a search warrant from any court of competent jurisdiction.

## SECTION 9. NOTIFICATION OF ACCIDENTAL DISCHARGES AND SPILLS

- (A) Notification. Notwithstanding other requirements of law, as soon as any person responsible for a facility, activity or operation, or responsible for emergency response for a facility, activity or operation has information of any known or suspected release of pollutants or non-storm water discharges from that facility or operation which are resulting or may result in illicit discharges or pollutants discharging into storm water, the City of Manchester's separate storm sewer system, State Waters, or Waters of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release so as to minimize the effects of the discharge.
- (B) Release Reporting. Any person in charge of any facility, vehicle, or other source of any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, dumping, disposing or any other release of any substances that may flow, leach, enter, or otherwise be introduced into the MS4 or waters of the United States, shall immediately telephone and notify the City of Manchester. Substances include any reportable quantity as outlined in 40 CFR Part 302; any extremely hazardous substance as established under 40 CFR Part 355, any oil that causes a film or sheen or discolors the surface of the water or causes a sludge emulsion to be deposited beneath the surface of the water or any harmful quantity of pollutant.
- (C) Immediate Notification Required. The immediate notification to the Department of Highways or the authorized enforcement agency in person or by phone, or facsimile no later than 24 hours of any incident outlined in Section 9(B), of the nature, quantity and time of occurrence of the discharge. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Director of Public Works or his duly authorized agent within three (3) business days of the phone or in person notice and shall include the chemical or substance name, exact location of release, time and duration

6

of release, estimated quantity and concentration of release, source of release, precautions that should be taken in regards to release, steps taken to contain and /or clean up release and the telephone numbers of the person or persons to be contacted for further information.

If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years. Said person shall also take immediate steps to ensure no recurrence of the discharge or spill. This information shall also be submitted in written form within five (5) days of the incident unless waived by a representative of the City.

- (D) Liability for Damage and Loss. The notifications required in Section 9(B&C) shall not relieve the responsible person of any expense, loss, damage or other liability which may be incurred as a result of the release. This includes liability for damage to the City, to natural resources, or to any other person or property; nor shall such notification relieve the responsible person of any fine, penalty, or other liability which may be imposed pursuant to the Storm Water Ordinance, these Rules and Regulations, or to state or federal law. Any person responsible for a release shall comply with all state, federal, and any other local requiring reporting, cleanup, containment, and any other appropriate remedial action in response to the release. The responsible person shall reimburse the City for any cost incurred by the City in responding to the release.

Failure to provide notification of a release as provided above is a violation of the City of Manchester's Storm Water Ordinance.

## **SECTION 10. VIOLATIONS, ENFORCEMENT AND PENALTIES**

- (A) Violations. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of the City's Storm Water Ordinance or these Rules & Regulations. Any person who has violated or continues to violate these provisions may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the Department of Highways is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. The Department of Highways is authorized to seek costs of the abatement as outlined in Section 10(E).

- (B) Notice of Violation. Whenever the Department of Highways finds that a violation of the ordinance or these Rules & Regulations has occurred, the Public Works Director or designee may order compliance by written notice of violation.
- (1) The notice of violation shall contain:

- 6
- (a) The name and address of the alleged violator;
  - (b) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
  - (c) A statement specifying the nature of the violation;
  - (d) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;
  - (e) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed; and,
  - (f) A statement that the determination of violation may be appealed to the Highway Commission by filing a written notice of appeal within five (5) days of service of notice of violation.

(2) Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of illicit discharges and illegal connections;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (e) Payment of costs to cover administrative and abatement costs; and,
- (f) The implementation of pollution prevention practices.

(C) Appeal of Notice of Violation. Any person receiving a Notice of Violation may appeal the determination of the Department of Highways. The notice of appeal must be received within five (5) days from the date of the Notice of Violation. Filing of an appeal does not relieve the owner from full compliance with the remedial actions outlined in the Notice of Violation. Hearing on the appeal before the Department of Highways, Storm Water Appeals Committee shall take place within thirty (30) days from the date of receipt of the appeal. The decision of the Committee shall be final.

(D) Enforcement Measures After Appeal. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, then representatives of the Department of Highways may enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

(E) Costs of Abatement of the Violation. Within ten (10) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the assessment or to the amount of the assessment within fifteen (15) days of such notice. If the amount due is not paid within thirty (30) days after receipt of the notice, or if an appeal is taken, within five (5) days after a decision on said appeal, the charges shall

6

become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the City of Manchester by reason of such violation.

- (F) Civil Penalties. In the event the alleged violator fails to take the remedial measures set forth in the Notice of Violation or otherwise fails to cure the violations described therein within two (2) days, or such greater period as the Department of Highways shall deem appropriate, after the Director of Public Works or designee has taken one or more of the actions described above, the Public Works Director may impose a penalty not to exceed \$10,000 (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.
- (G) Criminal Penalties. For intentional and flagrant violations of the Storm Water Ordinance or these Rules & Regulations, the Director of Public Works may issue a citation to the alleged violator requiring such person to appear in court to answer charges for such violation. Upon conviction, such person shall be punished by a fine not to exceed \$1,000 for each day the violation has occurred, or imprisonment for up to sixty (60) days or both. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.
- (H) Remedies Not Exclusive. The remedies listed in the Storm Water Ordinance and these Rules & Regulations are not exclusive of any other remedies available under any applicable Federal, State or local law and the City of Manchester may seek cumulative remedies.

The City of Manchester may recover attorney's fees, court costs, and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

## SECTION 11. ELIGIBILITY

- (A) Permit Eligibility. Permit eligibility is limited to discharges from "large" and "small" construction activity or as otherwise designated by the EPA. This general permit contains eligibility restrictions, as well as permit conditions and requirements. Permittee may have to take certain actions to be eligible for coverage under this permit. In such cases, permittee must continue to satisfy those eligibility provisions to maintain permit authorization. If the permittee does not meet the requirements that are pre-condition to eligibility, then the resulting discharges constitute unpermitted discharges. By contrast, if permittee does not comply with the requirements of the general permit, permittee may be in violation of the general permit for their otherwise eligible discharges.
- (B) Combined Sewer Drainage Systems. Discharges from "large" and "small" construction activity or as otherwise designated by the EPA that flow into a combined sewer system are

b

not covered by the EPA's Phase II Storm Water Program. A NOI does not need to be submitted to the EPA nor does the owner/operator have to receive acknowledgement from the EPA prior to the start of construction activity.

The City of Manchester is requiring in these instances that all other conditions as outlined in the Storm Water Ordinance and these Rules & Regulations shall apply to all construction activity as defined in Section 4, with the exception of submitting the NOI to EPA Region I. The requirements for determination of no impact status as outlined in the Endangered Species Act and Historic Preservation Act, along with the completion of a Storm Water Pollution Prevention Plan as outlined in the NOI submission is still a mandatory submission to the City of Manchester and must follow the conditions as outlined in the EPA's NOI.

EPA reissued the Construction General Permit (CGP) on July 1, 2003. The reissued CGP now covers both the Phase I large construction sites greater than five acres and "Storm Water Associated with Small Construction Activity," which includes construction sites from one to five acres (or smaller than one acre if part of a larger "common plan of development or sale" that totals one acre). The permit contains conditions to protect endangered species and historic properties and requires the owner and operator of the construction site to, among other things:

- o Develop and implement a Storm Water Pollution Prevention Plan (SWPPP).
- o Post a visible public notice at the main entrance of the construction site (or if unfeasible, at a local public building) containing confirmation of permit coverage and details on where the SWPPP may be viewed.
- o As part of the SWPPP, develop a site map showing surface waters, disturbed areas, best management practices (BMPs), etc.
- o Have "qualified personnel" inspect all erosion and sediment control BMPs, maintain BMPs after storm events and keep records in the SWPPP of all inspections and maintenance performed.
- o Control wastes, such as discarded building materials, concrete truck washout, and sanitary wastes.
- o File a Notice of Termination (NOT) form when the construction site is stabilized and revegetated.